108 U.S. 526-568
108-526

TRANSCRIPT OF [illegible].

SUPREME COURT OF THE UNITED STATES.

No. ~~411.~~ 135

NEAL RUGGLES, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED NOVEMBER 3RD, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 411.

NEAL RUGGLES, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	*a*	
Bond	1	1
Supersedeas	2	1
Complaint	4	2
Warrant	5	3
Bail	6	3
Transcript	6	3
Agreed statement of facts	10	5
Order continuing case	15	7
Jury waived, trial, and judgment	17	7
Appeal	18	8
Appeal bond	19	8
Certificate	20	8
Order granting leave to file additional record	21	9
Additional record	22	9
Bill of exceptions	23	9
Hearing in Supreme Court	29	11
Opinion	30	12
Judgment	39	15
Petition for rehearing	39	15
Order staying proceedings	42	16
Order denying petition for rehearing, and order staying proceedings vacated	43	16
Opinion on petition for rehearing	44	16
Dissenting opinion	49	18
Certificate of chief justice	51	19
Citation	53	19
Appeal bond	54	20
Certificate of clerk	56	20
Writ of error	58	21
Assignment of errors	59	21

SUPREME COURT OF THE UNITED STATES.

No. 411.

NEAL RUGGLES, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	*a*	
Bond	1	1
Supersedeas	2	1
Complaint	4	2
Warrant	5	3
Bail	6	3
Transcript	6	3
Agreed statement of facts	10	5
Order continuing case	15	7
Jury waived, trial, and judgment	17	7
Appeal	18	8
Appeal bond	19	8
Certificate	20	8
Order granting leave to file additional record	21	9
Additional record	22	9
Bill of exceptions	23	9
Hearing in Supreme Court	29	11
Opinion	30	12
Judgment	39	15
Petition for rehearing	39	15
Order staying proceedings	42	16
Order denying petition for rehearing, and order staying proceedings vacated	43	16
Opinion on petition for rehearing	44	16
Dissenting opinion	49	18
Certificate of chief justice	51	19
Citation	53	19
Appeal bond	54	20
Certificate of clerk	56	20
Writ of error	58	21
Assignment of errors	59	21

a At a supreme court, begun and held at Ottawa, on Tuesday, the second day of September, in the year of our Lord one thousand eight hundred and seventy-nine, within and for the northern grand division of the State of Illinois:

Present Pinkney B. Walker, chief justice; T. Lyle Dickey, justice; John Scholfield, justice; John M. Scott, justice; Benjamin R. Sheldon, justice; Alfred M. Craig, justice; John H. Mulkey, justice.

Attest:

E. F. DUTTON, *Clerk.*

NEAL RUGGLES,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 30, R. H. (1879). Appeal from Bureau.

Be it remembered that heretofore, to wit, on the third day of September, A. D. 1874, there was filed in the office of the clerk of the supreme court aforesaid, a certain transcript of the record and proceedings of the circuit court of Bureau County, which said transcript is in words and figures following:

1 Be it remembered that on the 21st day of March, A. D. 1873, came into the office of the clerk of the circuit court of Bureau County, State of Illinois, Neal Ruggles, by H. Bigelow, his attorney, and filed with said clerk appeal bond in the words and figures following, to wit:

Know all men by these presents that we, Neal Ruggles, as principal, and Hiram Bigelow, and C. Barrie, are held and firmly bound unto the people of the State of Illinois in the penal sum of one hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this 20th day of March, A. D. 1873.

The condition of the above obligation is such that, whereas the said people of the State of Illinois did, on the 20th day of March, A. D. 1873, before Thomas Rhodes, esq., a justice of the peace for the county of Bureau, State of Illinois, recover a judgment against the above bounden Neal Ruggles for the sum of ten dollars fine, and costs of suit, from which said judgment the said Neal Ruggles has taken an appeal to the circuit court of the county of Bureau aforesaid,
2 and State of Illinois. Now, if the said Neal Ruggles shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court, upon dismissal or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

NEAL RUGGLES. [SEAL.]
HIRAM BIGELOW. [SEAL.]
C. BARRIE. [SEAL.]

Taken and approved before me at my office this 21st day of March, A. D. 1873.

GEO. W. STONE, *Clk.*

Whereupon supersedias was issued out of said court, in the words and figures following, to wit:

STATE OF ILLINOIS,
Bureau County, ss:

The people of the State of Illinois to Thomas Rhodes, justice of the peace in and for said county, greeting:

Whereas, in a certain suit lately depending before you, the said justice of the peace, wherein the people, &c., plaintiff, and Neal Ruggles, defendant, judgment has been rendered in in favor of the said people, for the sum of ten dollars and costs;

And whereas the said Neal Ruggles has taken an appeal from the said judgment, and has given bond and security to the said
3 people, &c., for the due prosecution thereof according to law, which said bond is filed as of record in the said clerk's office: We therefore command and enjoin you, the said Thomas Rhodes, so being justice as aforesaid, that you do entirely supersede and desist from proceeding any further in said suit, and that you do forthwith suspend all proceedings in relation thereto, and cease from molesting the said Neal Ruggles in anywise on that account, until the said circuit court shall make other order to the contrary. And this you are in no wise to omit at your peril.

Witness, G. W. Stone, clerk of our said circuit court and the seal thereof, at Princeton, in said county, this 21st day of March, A. D. 1873.

[L. S.] G. W. STONE, *Clerk.*
By D. H. SMITH, *Deputy.*

To the sheriff of Bureau County to serve.

Which said supersedias was returned into court on the 25th day of March, A. D. 1873, endorsed as follows, to wit:

I have duly served this writ by reading the same to the within-named Thomas Rhodes, this 24th day of March, A. D. 1873.

M. G. LOVERIN,
Sheriff of Bureau County.
By MARTIN CONSE,
Deputy.

4 And afterwards, to wit, on the 21st day of April, A. D. 1873, came into the office of said clerk of the circuit court, Thomas Rhodes, esq., and filed in said court complaint, warrant, and transcript from his docket in the foregoing-entitled cause, and the same are in the words and figures following, to wit:

Complaint.

STATE OF ILLINOIS,
Bureau County, ss:

The complaint and information of Morgan A. Lewis, of Neponset, in said county, made before Thomas Rhodes, esquire, one of the justices of the peace in and for said county, on the 18th day of March, 1873, who, being duly sworn, upon his oath says, that Neal Ruggles, a conductor on the C. B. & Q. Railroad, & , brakeman on the C. B. & Q. Railroad, & , baggage-master on the C. B. & Q. Railroad, did, on the 17th day of March, 1873, with force and arms, at Buda, in the county aforesaid, him, the said Morgan A. Lewis, unlawfully com-

mit an assault and battery by taking hold of him and pulling and hauling him about and injuring his arm and nose. He therefore prays
5 that the said Neal Ruggles may be arrested and dealt with according to law.

MORGAN A. LEWIS.

Subscribed and sworn to before me this 18th day of March, 1873.

THOMAS RHODES,
Justice of the Peace.

Warrant.

STATE OF ILLINOIS,
Bureau County, ss:

The People of the State of Illinois to any constable of said county, greeting:

Whereas complaint hath been made in writing before me, one of the justices of the peace within and for the county aforesaid, upon the oath of Morgan A. Lewis, of said county, that Neal Ruggles did unlawfully assault and beat him, the said Morgan A. Lewis, on the seventeenth day of March, 1873, at Buda, in the county aforesaid. These are therefore to command you forthwith to arrest the said Neal Ruggles, and bring him before me, or some other justice of the peace of said county, to answer unto the said complaint, and to be further dealt with according to law.

Given under my hand and seal, at my office in Neponset, in said county, this 18th day of March, A. D. 1873.

THOMAS RHODES, [SEAL.]
Justice of the Peace.

6 Said warrant is endorsed as follows, to wit:

Executed by arresting the within-named defendant, Neal Ruggles, and bringing him into court before Thomas Rhodes, justice of the peace, this 18th day of March, 1873.

EZRA BLAKELY,
Constable.

I, J. D. Besler, acknowledge myself special bail for the fine and costs that may be put on the within-named defendant, and in one hundred dollars for his appearance before Thomas Rhodes on the 20th day of March, 1873, at 11 o'clock a. m.

J. D. BESLER.

Transcript.

STATE OF ILLINOIS,
Bureau County, ss:

In justice court before Thomas Rhodes, justice.

PEOPLE
vs.
NEAL RUGGLES. } For an assault & battery.

The complaint and information of Morgan A. Lewis, of Neponset, in said county, made before Thomas Rhodes, esquire, one of the justices

of the peace in and for said county, on the 18th day of March, 1873, who, being duly sworn, on his oath says, that Neal Ruggles, a conductor on the C. B. & Q. Railroad, did, on the seventh day of March, A.
7 D. 1873, with force and arms at Buda, in the county aforesaid, him, the said Morgan A. Lewis, commit an assault and battery by taking hold of him and pulling and hauling about and injuring his arm and nose; he therefore prays that the said Neal Ruggles may be arrested and dealt with according to law.

Warrant issued this 18th day of March, 1873, and delivered to Ezra Blakely, cons't, to execute.

Warrant returned endorsed: Executed by arresting the within-named defendant, and bringing him into court before Thomas Rhodes, justice of the peace, this 18th day of March, 1873.

Fees, 85 cts.

EZRA BLAKELY, *Const.*

Case called; the defendant asks for a continuance, and he being sworn for a continuance, and showing cause satisfactory to the court, and giving bail for his appearance, case continued to the 20th day of March, 1873, at 11 o'clock a. m.

MARCH 20th, 1873—11 o'clock a. m.

Time of trial; case called; the parties appear and the defendant dispenses with a jury.

Morgan A. Lewis and James Hartshorn appeared and were sworn as wit. for the plaintiff, and after hearing the testimony it is considered
8 by the court that the defendant is guilty of the charge as alleged against him, the said defendant; therefore it is considered by the court that he be fined ten dollars and costs of suit herein, taxed at $4.00.

THOMAS RHODES, *J. P.*

Supersedias served in this case, and a transcript and all the papers sent to the circuit court, this 16th day of April, 1873.

STATE OF ILLINOIS,
Bureau County, ss:

I, Thomas Rhodes, a justice of the peace in and said county, do hereby certify that the foregoing transcript and papers herewith contain a full and perfect statement of all the proceedings before me in said cause.

In witness whereof I have hereunto set my hand this 16th day of April, A. D. 1873.

THOMAS RHODES, *J. P.*

9 Pleas before the Hon'l Edwin S. Leland, judge of the sixth judicial circuit of the State of Illinois, at a term of the circuit court within and for the county of Bureau, in said State, begun and held at the court-house in the town of Priceton, in said county, on the fourth Monday in the month of August (the same being the twenty-fifth day of said month), in the year of our Lord one thousand eight hundred and seventy-three. Present, Hon'l Edwin S. Leland, judge, George W. Stone, clerk, and Moses G. Loverin, sheriff.

And now on the first day of said term are present as above written, and court is opened by proclamation in due form.

To wit, on this 17th day of said term.

FRIDAY MORNING, 9 *o'clock, September* 12, 1873.

Court met pursuant to adjournment. Present, same as on the first day.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NEAL RUGGLES, APP'L'T. } Appeal from J. P.

10 Now come said People, by Charles C. Warren, State's attorney, and also comes said defendant, by H. Bigelow, his attorney, and by agreement of parties file in said cause stipulation of facts, in the words and figures following, to wit:

STATE OF ILLINOIS,
Bureau County, ss:

Circuit court of Bureau County, August term, A. D. 1873.

THE PEOPLE OF THE STATE OF ILLINOIS
vs,
NEAL RUGGLES. } Appeal.

It is stipulated and agreed by and between the parties to this suit that the same shall be tried by the court without the intervention of a jury, upon the following facts, and the law governing the same, to wit:

On the 7th day of March, A. D. 1873, Morgan A. Lewis, the complaining witness in this cause, got on board the regular mail passenger train of the Chicago, Burlington, and Quincy Railroad at Buda, in the said county of Bureau, to go to Neponset, a station on the line of said railroad, six miles west of Buda; that said train started, and the defendant, Neal Ruggles, who was the regular conductor of said train,
11 demanded of said Lewis a ticket or his regular fare in cash, as established by said railroad company; that said Lewis had no ticket, but immediately tendered to the defendant as such conductor, the sum of eighteen (18) cents (being three (3) cents per mile from said Buda to Neponset), which the defendant refused to accept, but demanded of said Lewis the sum of twenty (20) cents, which was the regular fare charged by said railroad between said points, and which had been fixed by the board of directors and officers of said railroad company several years prior thereto, and which said sum of twenty (20) cents was charged to and paid by all passengers traveling between said places on said railroad.

Lewis refused to pay more than eighteen (18) cents, thereupon the defendant stopped his train before it had left the station at Buda and requested said Lewis to leave the train, which he refused to do, claiming that under the law of the State of Illinois, entitled "An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State," approved April 15th,
12 1871, he had a right to go and be carried from said Buda to Neponset for said sum of eighteen (18) cents, when the defendant, denying such right, attempted to remove said Lewis from the cars, and took hold of said Lewis for that purpose, and attempted to force and expel him therefrom (but used no unnecessary force in said attempt), but failed.

Thereupon said Lewis, after his arrival at Neponset, caused said defendant to be arrested for assault and battery in attempting to remove him (the said Lewis) from the cars, and on the 20th day of March, A. D. 1873, the defendant was tried before Thomas Rhodes, esq., a justice of the peace at Neponset, in said Bureau County, and fined $10 and costs, from which judgment the defendant took an appeal to this court.

It is further admitted and agreed that the said Chicago, Burlington and Quincy Railroad Company is a corporation situated in and created by the laws of the State of Illinois, and owns and operates a railroad between Chicago on Lake Michigan, in said State, and East Burlington and Quincy on the Mississippi
13 River, and that it is composed of The Aurora Branch Railroad, The Central Military Tract Railroad, The Peoria and Oquaka Railroad, and The Northern Cross Railroad, duly consolidated by virtue of an act of the general assembly of the State of Illinois, entitled "An act to enable railroad and plank-road companies to consolidate their stock," approved Feb. 28th, 1854, and that a copy of their said articles of consolidation was duly filed in the office of the secretary of state of the State of Illinois in the year 1856, in full compliance with said law.

And it is further admitted and agreed that said Chicago, Burlington and Quincy Railroad is in and belongs to class B of the said act entitled "An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State," approved April 15th, 1871, and in force July 1, 1871. And it is further admitted that the ticket-office at Buda was not open, so that said Lewis could purchase a ticket thereat, and that the said Lewis was an adult person, aged about 40 years.

14 Now, if the court shall find and be of opinion that the act last aforesaid was a valid and constitutional law in the matter of fixing, limiting, or controlling the rates of fare to be charged by said railroad, and that said Chicago, Burlington and Quincy Railroad Company was bound to obey the same, notwithstanding the provisions of its charter, the judgment of the justice of the peace should be affirmed with costs; but if said court shall find and be of the opinion that as to said Chicago, Burlington and Quincy Railroad in the said matter of fixing, limiting, or controlling its rate of passenger fare the said act is invalid and unconstitutional, then the defendant shall be acquit'ed and discharged.

It is further agreed that if, upon the foregoing facts, the court shall find and adjudge the defendant to be guilty of said assault and battery, then this agreement shall stand in lieu of and shall be taken and regarded as a bill of exceptions in this cause, and as embodying all of the evidence herein, and a motion for a new trial shall be regarded as having been made by the defendant and
15 formally overruled by the court and the defendant shall have leave to appeal said cause to the supreme court of Illinois by filing a bond in the office of the clerk of this court in the penal sum of $200, with Hiram Bigelow as surety, within twenty days from and after the rendition of the judgment by this court.

Dated this first day of September, A. D. 1873.

CHAS. C. WARREN,
States Att'y.

H. BIGELOW,
Att'y for Def't.

To wit, on the 24th day of said term.

SATURDAY MORNING—9 *o'clock*, *September* 20, 1873.

Court met pursuant to adjournment. Present, same as on the first day.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NEAL RUGGLES, APP'L'T. } Appeal from J. P.

Now comes said People by Charles C. Warren, States attorney, and on his motion it is ordered by the court that this cause be continued until the next term.

16 Pleas before the Hon'l Edwin S. Leland, judge of the sixth judicial circuit of the State of Illinois, at a term of the circuit court within and for the county of Bureau, in said State, begun and held at the court-house in the town of Princeton, in said county, on the first Monday in the month of December (the same being the first day of said month), in the year of our Lord one thousand eight hundred and seventy-three. Present, George W. Stone, clerk, Charles Warren, States Attorney, and Moses G. Loverin, sheriff.

And now, on this first day of said term, are present as aforesaid, but the Hon'l Edwin S. Leland, judge of said court, is not present, and thereupon, according to the statute in such case made and provided, court stands adjourned until to-morrow morning.

To wit, on the second day of said term.

TUESDAY MORNING—9 *o'clock*, *December* 2, 1873.

Court met pursuant to adjournment. Present, same as yes-
17 terday, and also Hon'l Edwin S. Leland, judge of said court.

To wit, on the 13th day of said term.

MONDAY MORNING—9 *o'clock*, *December* 15*th*, 1873.

Court met pursuant to adjournment. Present, same as on the second day.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NEAL RUGGLES, APP'L'T. } Appeal from J. P.

Now come the parties hereto, by their respective attorneys, Charles C. Warren for the People and Hiram Bigelow for defendant, and, by agreement of said parties, a jury is waived herein, and the cause heard and tried by the court.

And now said defendant moves the court to dismiss the prosecution herein. And the court, being first duly advised in the premises, it is ordered by the court that said motion be overruled.

And after hearing the argument of counsel herein, and being fully advised in the premises, the court finds the defendant guilty as charged herein.

And, therefore, it is ordered and adjudged by the court that
18 said defendant, Neal Ruggles, render unto said People a fine of ten dollars, and that he also pay all costs incurred herein, and that execution issue to collect the same.

And defendant, by his counsel, now prays an appeal to the supreme court of the State of Illinois, which it is ordered by the court be allowed, upon his entering into bond therefor in the penal sum of two hundred dollars, with Hiram Bigelow as surety therein, said bond to be filed within twenty days from this date.

To wit, on the 15th day of said term.

WEDNESDAY MORNING—9 *o'clock, December* 17, 1873.

Court met pursuant to adjournment. Present, same as on the second day.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NEAL RUGGLES, APP'L'T. } Appeal from J. P.

Now comes defendant, by his attorney aforesaid, and files herein his appeal bond, in the words and figures following, to wit:

19 Know all men by these presents that we, Neal Ruggles, as principal, and Hiram Bigelow, as security, are held and firmly bound unto The People of the State of Illinois in the penal sum of two hundred dollars ($200), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this 16th day of December, A. D. 1873.

The condition of the above obligation is such that whereas the said People of the State of Illinois, on the fifteenth (15th) day of December, A. D. 1873, in the circuit court of Bureau County, in the State of Illinois, recovered a judgment against the above bounden, Neal Ruggles, for the sum of ten dollars ($10) and costs of suit (the same being a fine imposed by said court for an assault and battery), from which judgment the said Neal Ruggles has taken an appeal to the supreme court of the State of Illinois.

Now, if the said Neal Ruggles shall duly prosecute said appeal, and shall pay the said judgment, with interest, damages, and costs,
20 in case the said judgment of the said circuit court shall be affirmed, then this obligation to be void; otherwise to remain in full force and effect.

NEAL RUGGLES. [SEAL.]
HIRAM BIGELOW. [SEAL.]

STATE OF ILLINOIS,
Bureau County, ss:

I, George W. Stone, clerk of the circuit court of Bureau County, State of Illinois, hereby certify that the foregoing is a true and correct transcript from the records and files of said court of the proceedings had therein in the foregoing-entitled cause.

Witness my hand and the seal of said court this 21st day of January, A. D. 1874.

[L. S.]

GEO. W. STONE, *Clerk*,
By D. H. SMITH, *Dep'y.*

(Which said transcript is endorsed as follows:) Filed Sept'r 3, 1874. C. D. Trimble, clerk.

21 And afterwards, to wit, on the 15th day of September, A. D. 1874 (said day being one of the days of the September term, A. D. 1874, of said court), the following, among other, proceedings was had and entered of record in said supreme court, in words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 12 P. D. Appeal from Bureau.

This day comes the appellant herein, by his attorneys, and moves the court now here for *for* leave to file additional record herein.

And said motion is now taken under advisement by the court.

And the court now here being duly advised in the premises, it is considered and allowed by the court that said motion be allowed, and that appellant have leave to file an additional record herein.

And afterwards, to wit, on the 17th day of September, A. D. 1874 (the said day being one of the days of said September term, A. D. 1874, of said court, an additional record in this cause was filed
22 in said court, which additional record is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Illinois, Bureau County, ss:

In circuit court. December term, A. D. 1873.

Pleas before the honorable Edwin S. Leland, judge of the sixth judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Bureau County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the town of Princeton, in said county, on the first Monday (being the first day) of December, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh year.

Present, honorable Edwin S. Leland, judge of the 6th judicial circuit of the State of Illinois, Charles C. Warren, State's attorney; Moses G. Loverin, sheriff.

Attest: GEO. W. STONE, *Clerk.*

And afterwards, to wit, on the 15th day of December, A. D. 1873, it being one of the days of said term of said court, there was
23 filed in the office of the clerk of said court a bill of exceptions, in the words and figures as follows, to wit:

STATE OF ILLINOIS,
Bureau County, ss:

In circuit court thereof, December term, A. D. 1873.

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
NEAL RUGGLES. } Assault & battery.

Be it remembered that on the trial of this case in the circuit court the only evidence given in the case or offered by either party was the following stipulation of facts, which was read in evidence:

Stipulation of facts as follows:

It is stipulated and agreed by and between the parties to this suit that the same shall be tried by the court, without the intervention of a

jury, upon the following facts and the law governing the same, to wit:

On the 7th day of March, A. D. 1873, Morgan A. Lewis, the complaining witness in this cause, got on board the regular mail passenger train of the Chicago, Burlington & Quincy Railroad at Buda, in the said county of Bureau, to go to Neponset, a station on the line
24 of said railroad, six miles west of Buda; that said train started, and the defendant, Neal Ruggles, who was the regular conductor of said train, demanded of said Lewis a ticket or his regular fare in cash, as established by said railroad company; that said Lewis had no ticket, but immediately tendered to the defendant, as such conductor, the sum of eighteen (18) cents (being three (3) cents per mile from said Buda to Neponset), which the defendant refused to accept, but demanded of said Lewis the sum of twenty (20) cents, which was the regular fare charged by said railroad between said points, and which had been fixed by the board of directors and officers of said railroad company several years prior thereto, and which said sum of twenty (20) cents was charged to and paid by all passengers traveling between said places on said railroad.

Lewis refused to pay more than eighteen (18) cents; thereupon the defendant stopped his train before it had left the station at Buda, and requested said Lewis to leave the train, which he refused to do, claiming that under the law of the State of Illinois, entitled "An act to es-
25 tablish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State," approved April 15th, 1871, he had a right to go and be carried from said Buda to Neponset for said sum of eighteen (18) cents, when the defendant, denying such right, attempted to remove said Lewis from the cars, and took hold of him for that purpose, and attempted to force and expel him therefrom (but used no unnecessary force in said attempt), but failed. Thereupon said Lewis, after his arrival at Neponset, caused said defendant to be arrested for assault and battery in attempting to remove him (the said Lewis) from the cars, and on the 20th day of March, A. D. 1873, the defendant was tried before Thomas Rhodes, esq., a justice of the peace, at Neponset, in said Bereau County, and fined $10 and costs, from which judgment the defendant took an appeal to this court.

It is further admitted and agreed that the Chicago, Burlington and Quincy Railroad Company is a corporation situated in and created by the laws of the State of Illinois, and owns and operates a railroad between Chicago, on Lake Michigan, in said State, and East Bur-
26 lington and Quincy, on the Mississippi River, and that it is composed of the Aurora Branch Railroad, The Central Military Tract Railroad, The Peoria and Oquaka Railroad, and The Northern Cross Railroad, duly consolidated by virtue of an act of the general assembly of the State of Illinois, entitled "An act to enable railroad and plank-road companies to consolidate their stock," approved February 28th, 1854, and that a copy of these said articlesof consolidation was duly filed in the office of the secretary of the State of Illinois, in the year 1856, in full compliance with said law.

And it is further admitted and agreed that said Chicago, Burlington and Quincy Railroad is in and belongs to class B of the said act, entitled "An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State," approved April 15th, 1871, and in force July 1st, 1871; and it is further admitted that the ticket-office at Buda was not open so that said Lewis could

purchase a ticket thereat, and that the said Lewis was an adult person, aged about forty years.

27 Now, if the court shall find and be of the opinion that the act last aforesaid was a valid and constitutional law in the matter of fixing, limiting, or controlling the rates of fare to be charged by said railroad, and that said Chicago, Burlington and Quincy Railroad Company was bound to obey the same, notwithstanding the provisions of its charter, the judgment of the justice of the peace shall be affirmed with costs; but if said court shall find and be of the opinion that, as to the said Chicago, Burlington and Quincy Railroad, in the said matter of fixing, limiting, or controlling its rate of passenger fare, the said act is invalid and unconstitutional, then the defendant shall be acquitted and discharged.

It is further agreed that if, upon the foregoing facts, the court shall find and adjudge the defendant to be guilty of said assault and battery, then this agreement shall stand in lieu of, and shall be taken and regarded as, a bill of exceptions in this cause, and as embodying all of the evidence herein, and a motion for a new trial shall be regarded as having been made by the defendant and formally overruled by

28 the court, and the defendant shall have leave to appeal said cause to the supreme court of Illinois, by filing a bond in the office of the clerk of this court, in the penal sum of $200, with Hiram Bigelow, as surety, within twenty days from and after the rendition of the judgment by this court.

Dated this first day of September, A. D. 1873.

CHARLES C. WARREN,
States Att'y.

H. BIGELOW,
Attorney for Def't.

The court, upon this evidence, found the defendant guilty, and adjudged him to pay a fine of ten dollars and costs; to which finding and judgment of the court said defendant then and there excepted, and prayed that this bill of exceptions be signed, sealed, and made a part of this record, which is done.

EDWIN S. LELAND, [SEAL.]
Judge of the 6th Jud. Circ't of Ills.

I, George W. Stone, clerk of the circuit court of Bureau County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the bill of exceptions in a certain cause pending in said court, on the law side thereof, wherein the

29 People of the State of Illinois are plaintiffs, and Neal Ruggles is defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Princeton, this 17th day of September, A. D. 1874.

[L. .S] GEORGE W. STONE, *Clerk.*
By D. H. SMITH, *Dep'y.*

And afterwards, to wit, on the 6th day of October, A. D. 1874 (said day being one of the days of said September term, A. D. 1874, of said court), the following, among other proceedings, were had and entered of record in said Supreme Court, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 12 P. D. Appeal from Bureau.

This day this cause coming on to be heard upon oral argument by Messrs. Cook and Browning, attorneys for appellant, and James K. Edsall, attorney-general, for appellees, and it appearing to the court now here, that a transcript of the record and proceedings of the court below, and also abstracts and briefs have been filed herein in
30 accordance with the rules of this court;

Therefore, it is considered by the court that this cause be now taken under advisement.

And afterwards, to wit, on the 22nd day of February, A. D. 1879 (said day being in vacation after the September term, A. D. 1878, of said court), the following, among other proceedings, were had and entered of record in said Supreme Court, in the words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Bureau.

Opinion by Walker J.—Filed February 22, 1879.

By the agreed facts in this case the question is presented whether the act of the general assembly, entitled *an* "An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State, approved April 15th, 1871, and in force July 1st, 1871, is unconstitutional. Appellant claims, and it may be conceded, that the charters of the several rail-
roads which consolidated, under laws authorizing the same, to
31 from the Chicago, Burlington and Quincy Railroad Company, formed contracts between those companies and the State. We apprehend this proposition will not be contested. But the nature and extent of those contracts is the subject of this dispute. We may safely assume that the present consolidated railroad succeeded to all the rights conferred by charter on the several roads thus consolidated, but it became invested with no greater or other rights than was possessed by the constituent companies forming consolidated organization.

Under those charters these companies were organized, constructed their roads, and were empowered to use and operate the same in transporting persons and property over their roads, and to fix fair's and charges for the same. And the charters became a contract between them and the State, that they might exercise these charter rights, till the expiration of the term for which their charters were granted, unless by some act violative of the obligations assumed by their organization they should forfeit these privileges and their franchises. And under the Constitution of the United States, the general assembly has no power to impair the obligation of these contracts and the company formed
32 by consolidation succeeded to these rights and privileges by that act.

But conceding this to be true in its fullest extent, still the question arises whether it may not be controlled in exercising its powers by reasonable legislation to the full extent the legislature may thus control natural persons exercising the same calling or business. The general

assembly may exercise all power not conferred on the general government orwhich it is not prohibited from exercising by constitutional limitations. This being true, has the general assembly the power to control natural persons and corporations in their business to protect the community from oppressive, unjust, and wrongful impositions in transacting their business or in performing their duties to the public.

When the general assembly brings into existence an artificial person or corporation it may at pleasure endow it with such faculties or powers as it may deem proper, and for the benefit of the corporators and the public. It may grant or with'old powers at pleasure; but it is believed that that body is powerless to confer greater or more unlimited powers
33 than are possessed by natural persons. The power, however, may no doubt, be conferred to that extent when necessary to accomplish the end sought; but it would be contrary to the very object of the creation of government to create bodies or artificial persons beyond the power of contract by the government. To create bodies in its limits beyond the governing power of the State, bodies that are only controlled by their own will, independent of law, and beyond its control, would be beyond the purpose of establishing government. It has been repeatedly held by this court, that when a corporation is thus created it becomes amenable to the police powers of the State, to the full extent that natural persons are subject to its control.

This doctrine was fully recognized and announced in the cases of Ohio and Mississippi Railroad v. McClellan., 25 Ills., 140; the Galena & Chicago R. R. v. Loomis, 13 Ill., 548; Galena and Chicago R. R. v. Dill, 22 Ill., 204; and has been announced in numerous subsequent cases as applicable to the police power of the State, and is the settled doctrine of this court; and it is referable to the maxim salus populi suprema est lex. It is for the protection, safety, and best interests of the peo-
34 ple that governments are instituted and maintained.

In this class of cases, as in that relating to the exercise of the police power of the State, corporate bodies are under the control of the State to the same, but to no greater extent than individuals. The general assembly may require of these bodies the performance of any and all acts which they are capable of performing which they may require of individuals. If the general assembly may fix maximum charges beyond which individuals may not go in performing services for the general public, and require them to conform to such requirements, then there can be no just reason why the general assembly may not require the same of corporate bodies. That body may, undoubtedly, for the same reason and to accomplish the same ends limit the power of each.

If, then, the general assembly may fix a maximum rate of charges by individuals as common carriers, warehousemen, or others exercising a calling or business public in its character, or in which the public has an interest, to be protected against extortion or oppression, that body may do the same thing and fix the maximum charges of corpo-
35 rations exercising the same business. Of this there can, we apprehend, be no doubt.

In the case of Munn v. The People, 69 Ill., 80, this court held that it was competent for the general assembly to fix the maximum charges by individuals keeping public warehouses for storing, handling, and shipping grain. And this, too, when such persons had derived no special privileges from the State, but were, as citizens of the State, exercising the business of storing and handling grain for individuals. This case was taken to the Supreme Court of the United States, and the doctrine was affirmed. (See Munn v. Illinois, 94 N. Y. R., 113.) So it may

be assumed that the doctrine is fully established that the general assembly has such power over private persons.

That court further held in Chicago, Burlington & Quincy Railroad v. Iowa, ib. 155, and Winona and St. Paul Railroad Co. v. Blake, ib. 180, that the legislature has the same control over railroad corporations. And in these cases there does not seem to have been any reservation of such power in their charters in the constitution of the State or in any general law, but the doctrine is placed on the general or necessary power of the State, and it was held not to violate any constitutional limitation, either State or Federal.

36

In the case of Winona & St. Paul Railroad v. Blake, supra there does not seem to have been any statutory or constitutional power reserved to thus regulate the charges of the company. And the original charter of the company, we infer, like that of this company, authorized that company to fix its own rate of charges. And the court say that the constitutional provision that "all corporations being common carriers * * * shall be bound to carry mineral, agricultural, and other productions or manufactures on equal and reasonable terms," or the act of the general assembly of the 28th of Feb., 1866, providing that the "company shall be bound to carry freight and passengers upon reasonable terms," do not add anything to or take from the provisions of the original charter.

In the case of the Chicago, Burlington & Quincy Railroad v. Iowa, supra, it was urged that by its charter it had the right to fix the rates of compensation for the transportation of persons and property over its road, and that it could not be controlled or taken away by the legislature of Iowa fixing a maximum rate of charges for the road. But the court held the law valid and binding; and the court say, "This company, in the transaction of its business, has the same rights, and is subject to the same control, as private individuals under the same circumstances. It may carry, when called upon to do so, and can charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject, the court must decide for it, as they do for private persons when controversies arise, what is reasonable; but where the legislature steps in and provides a maximum of charges it operates upon this corporation the same that it does upon individuals in a similar business. It was within the power of the company to call upon the legislature to fix permanently this limit, and make it a part of the charter, and if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done the charter might have presented a contract against future legislative interference; but it was not; and the company invested its capital, relying upon the good faith of the people and the wisdom and impartiality of legislators for protection against wrong under the form of legislative regulation." This case cannot be distinguished in its principles and material facts from this.

37

38

Both cases involve the construction of a provision of the Constitution of the United States; and that court having decided it, we must be governed by and give force to it. It is therefore unnecessary to further discuss the question.

There being no error in the record the judgment of the court below is affirmed.

Judgment affirmed.

To wit, on the day and year last aforesaid certain other proceedings

were had and entered of record in said supreme court, in the words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 2. P. D. A. D. Appeal from Bureau.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceed-
39 ings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error; therefore it is considered by the court that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said appellee recover of and from the said appellant their costs by them in this behalf expended, and that they have execution therefor.

And afterwards, to wit, on the 20th day of March, A. D. 1879 (said day being in vacation after the September term, A. D. 1878, of said court), there was filed in the office of the clerk of said supreme court a petition for a rehearing of said cause, which said petition and the order endorsed thereon are in the words and figures following, to wit:

40 In the supreme court of Illinois, northern grand division, September term, A. D. 1878.

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Bureau.

To the honorable the supreme court of Illinois:

Your petitioner, the appellant, respectfully represents and shows that there is error in the opinion of this honorable court heretofore filed in the above cause, and that a rehearing should be granted for the following reasons:

1. That the provision in the charters of the several companies forming the said Chicago, Burlington and Quincy Railroad Company authorizing them to fix their rates of fare and toll is a contract between the said Chicago, Burlington and Quincy Railroad Company and the State of Illinois, and that the said act of the general assembly approved April 15th, 1871, impairs the obligation of said contract.

41 2. That the opinion of this court wholly ignores said provision and the contract thereby created.

3. That the said opinion erroneously assumes that all persons, natural and artificial, who are engaged in any business or service in which the public is interested, are subject to regulation by the general assembly as to the rates and prices to be charged by them in such business or service.

4. That the authoritios cited and relied upon by the court as sustaintaining its conclusion, to wit: Munn vs. People, 69 Ills., 80; Munn vs. Illinois, 94 U. S. R., 113; C., B. & Q. R. R. Co. vs. Iowa, ib., 155, and Winona & St. Paul R'y Co. vs. Blake, ib. 180, do not apply to the case

before the court, in this, that in neither of those cases was there a contract that the corporation or individual might fix their rates of fare and toll.

5. That the case of C., B. &. Q. R. R. Co. vs. Iowa, cited at length in said opinion, expressly recognizes the distinction between a case like the one before the court, where the legislature has made a contract with the corporation fixing the rates of fare, and the class of cases cited in which there was no such contract, and asserts that the contract thus made would be binding on the State. In that case
42 the court say: "It was within the power of the company to call upon the legislature to fix permanently this limit, and make it a part of the charter; if it was refused, to abstain from building the road and establish the contemplated business. If that had been done the charter might have presented a contract against future legislative interference."

Wherefore your petitioner prays that a rehearing may be granted, and that until the hearing of this petition all proceedings in this cause may be stayed.

WIRT DEXTER AND
O. H. BROWNING,
Attorneys for Appellant.

STATE OF ILLINOIS, *ss:*

Having examined this petition, and it appearing that there is probable ground for granting a rehearing in this case, the undersigned, a judge of the supreme court of Illinois, hereby orders that all proceedings, under and by virtue of the judgment of the supreme court in the case mentioned in said petition, be stayed until the next term of the supreme court, where said petition can be considered.
43 Done at Chicago, March 4th, 1879.

T. LYLE DICKEY.

And afterwards, to wit, on the 23d day of September, A. D. 1879 (said day being one of the days of the September term, A. D. 1879, of said court), certain other proceeding' were had and entered of record in said Supreme Court in the words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 30, R. H. Petition for rehearing.

This day this cause coming on to be heard upon the petition of appellant for a rehearing herein, and the court here being now duly advised in the premises:

It is considered and ordered by the court that said petition for a rehearing be overruled and denied, and that the order staying proceedings heretofore entered herein be now set aside and held for naught.

And it is further considered and ordered by the court that said petitioners pay the costs and charges in and about their said petition
44 herein taxed.

And, afterwards, to wit, on the 1st day of October, A. D. 1879, (said day being in vacation after the September term, A. D. 1879, of said court), certain other proceedings were had and entered of record in said Supreme Court in the words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Petition for rehearing.

Opinion per curiam.

On a petition for a rehearing it is claimed that the case of the Chicago, Burlington, and Quincy R. R. Co. *v.* Iowa, 94 U. S. R., 155; recognizes a distinction between a charter which is entirely silent as to the power to fix the rate of tolls and one that authorizes the directors to fix them. That in the Iowa charter there was nothing contained in reference to the rates of tolls that might be charged, but it was silent on the subject. The court holds in such a case, as we have seen, that the road could carry when called
45 upon to do so, and could charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject the courts must decide for it as they do for private individuals, when controversies arise, what is reasonable. But when the legislature steps in and prescribes a maximum of charges it operates upon this corporation the same as it does upon individuals engaged in a similar business.

Here the court holds if the charter is as contended that the corporation had the implied power to fix charges for services rendered, but it was also held that in fixing such rates of charges they must be reasonable, and their reasonableness might, like those made by individuals, be inquired into and determined by the courts.

It was also held that in such cases these companies, as to such charges, were under the same legislative control as individuals engaged in a similar business. And they at the same time held that the charges of natural persons engaged as warehousemen in handling and storing grain for the public may be regulated by legislative action.

46 It is, however, claimed that in this case the general assembly expressly conferred the power on the directors of the company to fix the rates of toll to be charged, and to alter and change the same. In this the two cases differ. But does this express grant change the power of control, or does it confer unlimited power, or is the grant made with an implied limitation that in fixing their rates of toll they shall be reasonable. The fact that the grant and acceptance of the charter constitutes a contract does not solve the question. Like any other contract it is subject to construction.

In the case of Shields v. Ohio, 95 U. S. R., 319, a case in its facts very similar to this, the court gave construction to a clause in the constitution of Ohio. It was this: "No special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the general assembly." Under this provision of the constitution the general assembly passed a law prohibiting the railroad company, of which plaintiff in error was a conductor, from charging more than three cents a mile for carrying passengers over their road, and the company re-
47 quired him to charge three and a half cents. He endeavored to collect the latter sum, but the passenger refused to pay more than three cents, and the conductor forcibly expelled him from the train. He was prosecuted, convicted, and fined for an assault and battery in the State courts, and the conviction was affirmed on error in the Supreme Court of the United States in that case. But in discussing the questions presented the court use this language: "The power of the alteration and

amendment is not without limit. The alterations must be reasonable they must be made in good faith, and be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reserved powers, the vested rights of property of corporations in such cases are surmounted by the same sanctions, and are as inviolable as in other cases."

Now, if in this broad and comprehensive reserved power to "alter, revoke, or repeal," there is an implied limitation, such as this opinion holds, for the protection of the property and rights of these corporate bodies, why should not there be a similar limitation on the grant
48 of power to fix the rate of tolls? If there be such an implied limitation on the constitutional reservation to protect corporate bodies, why not a similar limitation on the grant to the corporation for the protection of commerce, trade, business, and the rights of the people? If any possible reason can be urged for the distinction, we have been wholly unable to perceive it. In the administration of justice there can be no well-founded reason for such a distinction. The same rules must apply to corporate bodies, in this regard, and to the people precisely alike. The general assembly surely could not have intended, in granting such charters, to clothe these bodies with unlimited and uncontrol'ed power. Had it been so expressed in the bills for these charters, it cannot be supposed they would have ever been enacted into laws. That department of government could not have intended to grant power to oppress and wrong the community without limit or control. And it is but a reasonable construction to hold that there is an implied restriction that this corporation, in fixing the rates of toll, shall make
49 them reasonable; and, if so, the general assembly must have the same power to say what is reasonable, maximum, charges as to do the same thing with individuals engaged in similar business, or in a calling of a public character.

Petition refused.

DICKEY, J., dissenting:

The Constitution of the U. S. provides that no State shall pass any law impairing the obligation of contracts. Were this an open question I would hold that an express provision in the charter of a railroad company, that such corporation may fix its charges for freight and passengers merely confers upon the corporation the function with which natural persons, acting as common carriers, are endowed without the aid of a statute; and that such provision ought not to be construed as an agreement on the part of the State that the State will not interfere with the exercise of that function by passing acts on that subject, such as it may pass and render operative upon natural persons. My view would be that, notwithstanding such express provision in the charter, the corporation, like the natural person, is subject to the passage
50 of all such reasonable laws as may be passed to define and punish extortion.

This, however, is a question upon which the rulings of the Supreme Court of the United States are binding authority. I understand the rulings of that court to be that, in case of such express provision in the charter, the State has contracted not to interfere by legislation with the fixing of such charges. To that authority I feel it my duty to submit.

To wit, on the 30th day of September, A. D. 1879 (said day being in vacation after the September term, A. D. 1879, of said court), a certain

certificate was filed in the office of the clerk of said supreme court, which certificate is in the words and figures following, to wit:

In the supreme court of the State of Illinois.

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from the circuit court of Warren County.

This certifies that in the determination of this case there was necessarily drawn in question the construction of that clause
51 of the Constitution of the United States which prohibits a State from passing laws impairing the obligation of contracts. The plaintiff in error or appellant claimed that he was justified in the act for which he was prosecuted in the court below by the charters of the Chicago, Burlington and Quincy Railroad Company, he being a conductor on the railroad of said company, and that said charters conceded to said company the right to fix the rates for the transportation of persons and property over and upon said road, and that said charters constituted a contract substantially guaranteed and protected by the Constitution of the United States; and I certify that said claim was disallowed and decided adversely to the said appellant, by the said supreme court, upon the ground that by virtue of the provisions of a statute of the State of Illinois, passed subsequently to the granting of the charters of the said Chicago, Burlington and Quincy Railroad Company, a less rate of fare for transportation of persons and property upon said road had been established by State authority than the rate fixed by the company under the authority of its charter,
52 and that said statute controlled the charter of the company in regard to the rates of transportation over and upon said road, and that the provisions of said charters granting to said company the right to fix the rates for the transportation of persons and property over its road did not constitute a contract protected by the Constitution of the United States, but was subject to alteration and modification by the legislature of Illinois, all of which is hereby duly certified, to the end that the said appellant may present the said question to the Supreme Court of the United States for adjudication.

Witness the honorable Pinkney H. Walker, chief justice of the supreme court of the State of Illinois, this 26th day of September, one thousand eight hundred and seventy-nine.

P H. WALKER.

To wit, on the 30th day of September, A. D. 1879, (said day being in vacation after the September term, A. D. 1879, of said court) a certain citation was filed in the office of the clerk of said supreme court, which citation is in the words and figures following, to wit:

53 The United States of America, to the people of the State of Illinois, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden on the twenty-seventh day of October, A. D. 1879, to wit, on the third Monday of the October term, A. D. 1879, of said Supreme Court, at Washington, D. C., pursuant to a writ of error issued by the clerk of the circuit court of the United States in and for the northern district of Illinois, and filed in the office of the clerk of the supreme court of the State of Illinois for the north-

ern grand division of said State, wherein Neil Ruggles was plaintiff in error, and the People of said State of Illinois are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Pinkney H. Walker, chief justice of the supreme court of the State of Illinois, this 26th day of September, A. D. 1879.

P. H. WALKER,
Chief Justice Supreme Court of Ill.

54 And, to wit, on the 30th day of September, A. D. 1879 (said day being in vacation after the September term, A. D. 1879, of said court), there was filed in the office of the clerk of said supreme court a certain appeal bond, which appeal bond and the endorsements thereon are in the words and figures following, to wit:

NEAL RUGGLES
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.

Know all men by these presents that we, Neal Ruggles, of the city of Chicago, State of Illinois, as principal, and O. H. Browning, of Quincy, Illinois, L. O. Goddard, of Chicago, same State, as sureties, are held and firmly bound unto the People of the State of Illinois in the penal sum of five hundred dollars ($500), to be paid to the people of the State of Illinois, for the payment of which well and truly to be made, we bind ourselves and each of us, jointly and severally,
55 and our and each of our successors, assigns, heirs, executors, and administrators, firmly by these pres-ents.

The condition of the above obligation is such that whereas the above-named Neal Ruggles hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of the State of Illinois:

Now, therefore, if the above-named Neal Ruggles shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

Witness the respective hands and seals of the above-named principal and sureties this twenty-seventh day of September, A. D. 1879.

NEAL RUGGLES. [SEAL.]
O. H. BROWNING. [SEAL.]
L. O. GODDARD. [SEAL.]

(Endorsed:) Taken and approved by me this 30th day of September, A. D. 1879.

P. H. WALKER, *Ch. J.*

Filed Sep. 30, 1879. E. F. Dutton, clerk.

56 Supreme court of Illinois, northern grand division.

I, Everill F. Dutton, clerk of the supreme court in and for the northern grand division of the State of Illinois, do hereby certify that the foregoing is a full and true copy of the record and proceedings in a certain cause lately pending in said court, wherein Neal Ruggles was appellant and the People of the State of Illinois was appellee.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, this second day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] E. F. DUTTON,
Clerk of the Supreme Court.

57 Supreme court of Illinois, northern grand division.

I do hereby certify that the annexed certificate and attestation of Everill F. Dutton are in due form of law; and I do further certify that he is the clerk of the supreme court for the northern grand division of the State of Illinois, and that his signature to said certificate is genuine.

Given at Ottawa, Ill., Oct. 1st, 1879.

P. H. WALKER,
Ch. J. Sup. C'rt Ill.

58 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the justices of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between Neal Ruggles, plaintiff, and The People of the State of Illinois, defendants, in an appeal, a manifest error hath happened, to the great damage of the said Neil Ruggles, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the third Monday of October term, A. D. 1879, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 104th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. Neil Ruggles vs. People of the State of Illinois. Writ of error. Filed Sep. 30, 1879. E. F. Dutton, clerk.

59 In the Supreme Court of the United States, October term, 1879.

NEAL RUGGLES, PLAINTIFF IN ERROR,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, defendants in error.
} Error to the supreme court of the State of Illinois.

And now comes the said Neal Ruggles, plaintiff in error, by his at-

torney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The court erred in holding and deciding that the provision of the charter of the Chicago, Burlington & Quincy Railroad Company, which grants to the company the right to fix the rates for the transportation of persons and property over its road was not a contract protected by the Constitution of the United States.

Second. The court erred in holding and deciding that the act of the general assembly of the State of Illinois, entitled "an act to establish a reasonable maximum rate of charges for the transportation of
60 passengers on railroads in this State." Approved April 15, 1871, and in force July 1, 1871, was constitutional; and that it did not impair the obligation of the charter contract before that time entered into between the said State of Illinois and the Chicago, Burlington and Quincy Railroad Company, whereby the right was granted to said company to fix the rate of charges for the transportation of passengers over its said road.

Third. The court erred in holding and deciding that the grant by the general assembly of the State of Illinois to the Chicago, Burlington and Quincy Railroad Company of the power to establish such rates of toll for the conveyance of persons or property upon its road as said company should, from time to time, by their by-laws, determine; and to levy and collect the same for the use of said company, was subject to alteration and modification by the legislature of Illinois; and that said legislature had, by an act passed subsequent to the granting of said charter to said company taken away from said company the right to establish the rates of toll for the conveyance of persons and property upon its said road, and to levy and collect the same for its use; and
61 that said act, in so doing, did not impair the obligation of the contract between the State and the company, and did not violate the provision of the Constitution of the United States, which prohibits the States from passing laws impairing the obligation of contracts.

Fourth. The court erred in holding and deciding that the plaintiff in error was not justified in the act for which he was prosecuted by the provisions of the charter of the Chicago, Burlington and Quincy Railroad Company, and the by-laws of said company passed in pursuance thereof.

Fifth. The court erred in not reversing the judgment of the court below.

Sixth. The court erred in affirming the judgment of the court below.

Wherefore, for the errors aforesaid, the said plaintiff in error prays that the said judgment of the said supreme court of Illinois may be reversed, annulled, set aside, and for nothing held, and that his costs herein expended may be adjudged to him, &c.

O. H. BROWNING,
For Plaintiff in Error.

(Indorsement on cover:) No. 411. Neal Ruggles, plaintiff in error, vs. The People of the State of Illinois. Illinois sup. c't. Filed 3rd November, 1879.

108-526

OFFICE SUPREME COURT U. S.
FILED
DEC 12 1882
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error.

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

—BY—

JAMES McCARTNEY,
ATTORNEY-GENERAL OF ILLINOIS.

SPRINGFIELD, ILL.:
ILLINOIS STATE JOURNAL PRINT.
1882.

torney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The court erred in holding and deciding that the provision of the charter of the Chicago, Burlington & Quincy Railroad Company, which grants to the company the right to fix the rates for the transportation of persons and property over its road was not a contract protected by the Constitution of the United States.

Second. The court erred in holding and deciding that the act of the general assembly of the State of Illinois, entitled "an act to establish a reasonable maximum rate of charges for the transportation of
60 passengers on railroads in this State." Approved April 15, 1871, and in force July 1, 1871, was constitutional; and that it did not impair the obligation of the charter contract before that time entered into between the said State of Illinois and the Chicago, Burlington and Quincy Railroad Company, whereby the right was granted to said company to fix the rate of charges for the transportation of passengers over its said road.

Third. The court erred in holding and deciding that the grant by the general assembly of the State of Illinois to the Chicago, Burlington and Quincy Railroad Company of the power to establish such rates of toll for the conveyance of persons or property upon its road as said company should, from time to time, by their by-laws, determine; and to levy and collect the same for the use of said company, was subject to alteration and modification by the legislature of Illinois; and that said legislature had, by an act passed subsequent to the granting of said charter to said company taken away from said company the right to establish the rates of toll for the conveyance of persons and property upon its said road, and to levy and collect the same for its use; and
61 that said act, in so doing, did not impair the obligation of the contract between the State and the company, and did not violate the provision of the Constitution of the United States, which prohibits the States from passing laws impairing the obligation of contracts.

Fourth. The court erred in holding and deciding that the plaintiff in error was not justified in the act for which he was prosecuted by the provisions of the charter of the Chicago, Burlington and Quincy Railroad Company, and the by-laws of said company passed in pursuance thereof.

Fifth. The court erred in not reversing the judgment of the court below.

Sixth. The court erred in affirming the judgment of the court below.

Wherefore, for the errors aforesaid, the said plaintiff in error prays that the said judgment of the said supreme court of Illinois may be reversed, annulled, set aside, and for nothing held, and that his costs herein expended may be adjudged to him, &c.

O. H. BROWNING,
For Plaintiff in Error.

(Indorsement on cover:) No. 411. Neal Ruggles, plaintiff in error, vs. The People of the State of Illinois. Illinois sup. c't. Filed 3rd November, 1879.

108-526

OFFICE SUPREME COURT U.S.
FILED
DEC 12 1882
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error.

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

—BY—

JAMES McCARTNEY,
ATTORNEY-GENERAL OF ILLINOIS.

SPRINGFIELD, ILL.:
ILLINOIS STATE JOURNAL PRINT.
1882.

SRPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1882.

No. 138.

NEAL RUGGLES,

v.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

BY JAMES MCCARTNEY, ATTORNEY GENERAL, ILLINOIS.

This was an action in the court below, for assault and battery, under the criminal laws of the State of Illinois.

Revised Statutes of Illinois 1874, page 355, sec's 21, 22.

The defendant was a railroad conductor, the prosecuting witness a passenger on his train.

The prosecuting witness tendered the fare fixed by the statutes of the State of Illinois, which was a less sum than

the railroad company had directed their officers to charge, and upon refusal of the prosecuting witness to pay more than the lawful rate, the conductor expelled him from the car by force.

Public Laws of Illinois 1871–72, page 640.

Stipulation, page 5 of Record.

It is urged by counsel for plaintiff in error that this law of Illinois of 1871 is in violation of the charter of the Railroad Company, and is, therefore, in conflict with that clause of Sec. 10, Art. 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

Defendant in error replies:

First—That the law of Illinois of 1871 is merely a police regulation, and as such the enforcement of it is the enforcement of a criminal law of the State of Illinois, and

Second—That under no circumstance, could the Legislature part with this power in a charter or otherwise.

Spooner v. *McConnell et. al.*, 1 McLean, 337.
East Hartford v. *Hartford Bridge Co.* 10 How. 511.
Goszler v. *Georgetown*, 6 Wheat. 596.
Maryland v. *B. & O. R. R. Co.* 3 How. 534.
Beer Co. v. *Massachusetts*, 97 U. S. 25.
Charles River B. Co. v. *Warren B.* 11 Pet. 544.
Alden on Science of Government, 1.
Work of Calhoun, Vol. 1, 4.
Yeaman on Study of Gov. 65.

Vattel Law of Nations, § 18.
K. P. R. R. Co. v. *Mower*, 16 Kan. 573.
Cong. Deb. Vol 9, Pt. 1, 537.
Mechanics Bank v. *Debolt*, 1 O. St. 591.
Cooley's Const. Lim. *572.
Munn v. *Illinois*, 94 U. S. 113.
Chicago, etc. R. R. Co. v. *Iowa*, 94 U. S. 155.
Peik v. *Chicago, etc. R. R. Co.* 94 U. S. 164.
Ohio L. & T. Co. v. *Debolt*, 16 How. 416.
Keith v. *Clark*, 97 U. S. 454.
Tiffany's Gov. and Const. Law, n. 1, § 106.
Rogers v. *Burlington*, 3 Wall. 654.
Stourbridge Canal v. *Wheeley et. al.* 2 Barn. & Ald. 792.
Canal Co. v. *Hustler*, Barn. & Cressw. 424.
Dock Co. v. *La Marche*, 8 Barn. & Cressw. 42.
Perrine v. *C. & D. Canal Co.* 9 How. 172.
1 Wilson, 115.
Strange, 1238.
Coke's Eliz. 710.
Cooper, 47.
11 East, 476.
4 Taunt. 520.
1 Barn. & Cressw. 223. 424.
1 Atkyns 815.
2 Black. Com. 47.
4 Mod. 320.
2 Roll. Ab. 171.
Barrett v. *Stockton R. R. Co.* 2 Man. & Gra. 165.
Hull Dock Co. v. *Browne*, 2 Barn. & Ad. 58.
Whiting v. *S. & F. R. R. Co.* 25 Wis. 167, 196.

Hamilton v. *Keith*, 5 Bush, 460.
State v. *B. C. & M. R. R. Co.* 25 Vt. 433.
McGregor v. *Erie R. R. Co.* 35 N. J. 89, 115.
Beekman v. *S. & S. R. R. Co.* 3 Paige, 62.
Charles R. B. Co. v. *Warren B. Co.* 7 Pick. 495.
Angell on Highways, § 368 and cases cited.
Olcott v. *Banfill*, 4 N. H. 545.
Beatty v. *Trustee*, 4 Peters, 168.
Thorpe v. *R. & B. R. R. Co.* 27 Vt. 146.
B. & L. R. R. Co. v. *S. L. R. R. Co.* 2 Gray, 27.
Comr's. v. *H. W. P. Co.* 104 Mass. 457.
E. & N. E. R. R. Co. v. *Casey*, 26 Pa. St. 307.
License Cases, 5 How. 583.
R. R. Co. v. *Fuller*, 17 Wall. 560.
Delaware R. R. Tax Case, 18 Wall. 206.
West River B. Co. v. *Dix et. al.* 6 How. 507.
O. & M. R. R. Co. v. *McClelland*, 25 Ill. 140.
G. & C. U. R. R. Co. v. *Appleby*, 28 Ill. 283.
Dingman v. *The People*, 51 Ill. 277.
Lake View v. *Rose Hill Cem. Co.* 70 Ill. 191.
N. W. Fertilizer Co. v. *Hyde Park*, Id. 634.
Dunne v. *People*, 94 Ill. 120.
Ruggles v. *People*, 91 Ill. 256.
I. C. R. R. Co. v. *People*, 95 Ill. 313.
C. & A. R. R. Co. v. *People*, 67 Ill. 11.
Ward v. *Farwell*, 97 Ill. 593,
Kimball v. *B. & A. R. R. Co.* 70 N. Y. 569.
Com. v. *Eastern R. R. Co.* 103 Mass. 254.
Nelson v. *V. & C. R. R. Co.* 26 Vt. 717.
K. P. R. R. Co. v. *Mower*, 16 Kan. 573.

Com. v. *Intoxicating Liquors*, 115 Mass. 153.
Gorman v. *Pacific R. R. Co.* 26 Mo. 441.
Gaines v. *Coates*, 51 Miss. 335.
Sloan v. *P. R. R. Co.* 61 Mo. 24.
G. & C. U. R. R. Co. v. *Loomis*, 13 Ill. 548.
Regents v. *Williams*, 9 Gill & J. 365, 390.

What is not *expressly* given by the charter, or is necessary to carry out some power expressly given, is withheld.

Where any doubt exists as to the powers under a charter, those doubts must be resolved in favor of the State.

Fertilizer Co. v. *Hyde Park*, 97 U. S. 659.
Com. v. *E. R. R. Co.* 27 Pa. St. 339.
Thomas v. *R. R. Co.* 101 U. S. 71.

The charters of this railroad company do not give an *exclusive* power to the officers of the company to fix rates. The reservation of the police power to *regulate*, is in no way parted with.

Private Laws of Illinois 1849, 99.
Ibid. pages 82 & 96
Private Laws of Illinois 1847, 144.
Private Laws of Illinois 1852, 36.
Jackson v. *Lamphire*, 3 Peters, 280.
Providence Bank v. *Billings*, 4 Peters 514.
Perrine v. *C. & D. Canal Co.* 9 How. 172.
Head v. *Providence Ins. Co.* 2 Cranch, 127.
Richmond R. R. Co. v. *Louisa. R. R. Co.* 13 How. 71.
Minturn v. *Larne*, 28 How. 435.
Bank of Augusta v. *Earle*, 13 Peters, 519.

Fanning v. *Gregoire*, 16 How. 524.
Binghampton Bridge, 3 Wall. 51.
Turnpike Co. v. *State*, Ibid, 210.
Mills v. *St. Clair Co.* 8 How. 569.
Toledo Bank v. *Bond*, 1 O. St. 622.
Shorter v. *Smith*, 9 Ga. 517.
State v. *S. P. R. R. Co.* 24 Texas, 80.
Spring Valley W. W. v. *S. F.* 52 Cal. 111.
Collins v. *Sherman*, 31 Miss. 679.
Turnpike Company v. *People*, 82 Ill. 174.
Thompson v. *N. Y. & H. R. R. Co.*, 3 Sandf. ch. 625.
M. R. B. Co. v. *S. R. R. Co.* 6 Paige, 554.
Ex. parte L. I. R. R. Co. 19 Wend. 37.
Tuckahoe C. Co. v. *Tuckahoe R. R. Co.* 11 Leigh, 42.
McIntyre v. *Ingraham*, 35 Miss. 25.
Hartford B. Co. v. *Union Ferry Co.* 29 Conn. 210.

Argument for Defendant in Error

This case grows out of the attempt made by the State authorities of Illinois to enforce a law, passed and approved April 15, 1871, and in force July 1, 1871, which is as follows:

"*An Act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State.*"

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all railroad corporations, organized or doing business in this State, under the laws or authority thereof, shall be limited to the rates of compensation for the transportation of passengers, which are herein prescribed.

Sec. 2. All railroads in this State shall be classified according to the gross amount of their respective annual earnings, per mile, as follows:

Class A, shall include all railroads whose gross annual earnings, per mile, shall be $10,000 or more.

Class B, shall include all railroads whose gross annual earnings, per mile, shall be $8,000, or any sum in excess thereof less than $10,000.

* * * * * * * *

SEC. 3. All railroad corporations, according to their classification, as herein prescribed, shall be limited to compensation, per mile, for the transportation of any person with ordinary baggage, not exceeding one hundred pounds in weight, as follows:

Class A, two and one-half cents.
Class B, three cents.

* * * * * * *

Provided, that no such corporation shall charge, demand or receive any greater compensation, per mile, for the transportation of children twelve years of age or under, than half the rates above prescribed: *And, provided, also*, a charge of ten cents may be added to the fare of any passenger, when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train.

SEC. 4. All railroad corporations shall keep posted in a conspicuous place in their depots, a printed copy of this act, with a table of distances between each and every station of their road, and a statement showing the class to which its road belongs."

The remaining sections have reference to the penalty, and the manner of recovery for a violation of the act.

It is admitted that the Chicago, Burlington and Quincy Railroad was one of the roads contemplated, and that it belonged in Class B of said act, and by virtue thereof had the right to charge three cents per mile for the carriage of passengers over twelve years of age. That, on the 7th day of March, 1873, while this law was in force, one Lewis got on board a train of such railroad to go six miles over said road;

that he tendered 18 cents, the fare provided by said act for such carriage, but that it was refused and 20 cents demanded, this being the fare fixed by the officers of the road; that Neal Ruggles, the plaintiff in error, was the regular conductor upon this train, and who, thereupon, ejected said Lewis from the train because of his failure to pay the sum required by the officers of the company for his carriage. Lewis caused the arrest of Ruggles for assault and battery, and he was fined therefor. The case went through the regular courts until it finally came to the Supreme Court of the State of Illinois, which Court, in 91 Ill. 256, affirmed the decision assessing a fine upon the conductor. From that decision a writ of error was sued out to this Court, under the statute.

The only ground upon which it has been claimed that this Court has jurisdiction is, that the law above quoted is in violation of that clause of Sec. 10, Art. I, of the Constitution of the United States, which provides that "No State shall * * * pass any * * law impairing the obligation of contracts." It is claimed that this railroad exists by virtue of an authorized consolidation of the charters, franchises, etc., of four railroads, chartered by the State of Illinois, the charters of each of which roads provided that the directors thereof should have the power to fix the rates of fare for the carriage of passengers upon their respective roads, which power was, in the consolidation, transferred to the directors of the consolidated company. It is urged that these charters were contracts between the State and the respective companies, and that by these contracts the State parted with the power to regulate or interfere with the rate fixed by the

proper officers of the company. These charters were all granted specially by various Legislatures of the State prior to the year 1870, and when they were granted there was no provision in the Constitution, or any law of the State, reserving the right to amend or alter any charter granted. It is claimed that this law of 1871 could not, therefore, affect this company or interfere with its right to fix such rates of fare for the carriage of passengers as it might see fit, and the company, therefore, utterly ignored the law.

We have no desire to question any of the facts submitted. I shall only rely upon questions of law, as follows:

First—That this Court has no jurisdiction of this case, as it is brought solely for the purpose of enforcing a criminal law of the State.

Second—This law is an exercise of the police power of the State, which cannot be contracted or given away by the Legislature.

Third—The charters in question confer the power upon certain railroad officers to fix rates, but does not confer an *exclusive* power, and therefore a supervisory power is retained by the State.

The two first propositions may be discussed together, for if the law in question is a proper exercise of the police power of the State, it cannot be contracted away in a charter, and in consequence it is not "a law impairing the obligation of a contract," and, in that event, the Federal Courts lose their jurisdiction over it, or rather never had any such jurisdiction.

For the sake of the argument upon this point, we may admit that the Legislature of Illinois, so far as was in their power, in the charters of the road, gave the right to the officers of this road to fix their own rates of fare, and that when these charters were granted there was no express provision in the constitution or laws of the State of Illinois authorizing the amendment or alteration of a charter granted to a corporation. We also admit that a charter is a contract between the State and the corporation, and cannot be impaired or altered without the consent of the contracting parties.

We have, then, only one ground left upon which we can rely to sustain the decision of the Supreme Court of Illinois upon this branch of the defense, and that is:

That the Legislature had no power to make any contract with any corporation, man, or body of men, by which the State parted with its right to exercise its police powers.

This is a trifling case, apparently. But the decision of the questions involved will affect a large share of the property of the civilized world, as well as the rights of all the people of this nation.

Considering the immense collateral interests involved, we ask the kind indulgence of the Court if we should, in argument, go more fully into the investigation of questions apparently well settled, than may seem necessary, in our zeal to do our whole duty in the case, and in our desire to fail in nothing that may aid the Court in settling the important questions raised, in a just and satisfactory manner.

We have in this case to meet the combined learning and very eminent talents of the ablest lawyers of the United States, for most of such are in these days in the employ of the railroad companies and all railroads are deeply interested in overturning this decision of the Supreme Court of Illinois. We, however, come before the Court with the belief that the rights of the people will be fairly considered by the Court and exact justice be done them, and, with abiding faith that the laws of justice and right are eternal and will always prevail, we submit our cause.

We take the position first, That the government being instituted for the protection of the governed in person and property, those powers with which it is invested for these purposes cannot be parted with or delegated. In other words, that the government cannot part with or delegate any authority which may be necessary for the protection of any people or class of people within its boundaries. It ought not to require any argument to prove the truth of this proposition. We will, however, refer to a few authorities, so that no cavil may be made over the proposition. In the case of *Spooner* v. *McConnell et al.* 1 McLean, 337, it was said by McLean, J., in deciding the case:

"A State cannot divest itself of its essential attributes of sovereignty. It cannot enter into a compact *not* to exercise its legislative and judicial functions, or its elective rights, because this would be to change the form of government which is guaranteed by the Federal Constitution."

In the case of *East Hartford* v. *Hartford Bridge Co.* 10 How. 511, Mr. Justice Woodbury, in delivering the unanimous opinion of this Court, said:

"One of the highest attributes and duties of a Legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand. It can neither devolve these duties permanently on other public bodies, *nor permanently suspend or abandon them itself*, without being usually regarded as unfaithful, *and indeed, attempting what is wholly beyond its constitutional competency.*"

When speaking of the case of *Goszler* v. *Georgetown*, 6 Wheat. 596, Mr. Justice Woodbury further said:

"This case appears to settle the principle, that a legislative body *cannot part with its powers* by any proceeding so as not to be able to continue the exercise of them. It can and should exercise them, again and again, as often as the public interests require."

In the case of *Maryland* v. *Baltimore and Ohio R. R. Co.* 3 How. 534, Chief Justice Taney, in commenting upon the argument made by counsel, that the State of Maryland had by legislative acts in effect delegated some of its powers to a county, said:

"If the construction of the plaintiff in error be right, the Legislature of Maryland in a case where the whole people of the State had become so deeply concerned by the large amount subscribed to the capital stock of the road, that its success or failure must seriously affect the interests of every part of the State; and where the improvement was regarded as of the highest importance to its general commercial prosperity, it deliberately deprived itself of the power of exercising any future control over it, and left it to a single county or county corporation to decide upon the course of the road, and either to insist on the line prescribed by the Legislature, or to release the company from the obligation to pursue it, without regard to the wishes or interest of the rest of the State. Whether the million of dollars was reserved by contract or inflicted as a penalty, such a construction of the law cannot be maintained."

A very plain, clear and concise statement of this idea of the power and the duty of Legislatures is given by Mr.

Justice Bradley, in *Beer Co.* v. *Massachusetts*, 97 U. S. 25. He there said:

"If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the Legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer. *All rights are held subject to the police power of the State.* * * * The plaintiff in error boldly takes the ground that, being a corporation, it has a right by contract to manufacture and sell beer forever, notwithstanding and in spite of any exigencies which may occur in the morals or the health of the community, requiring such manufacture to cease. We do not so understand the rights of the plaintiff. *The Legislature had no power to confer any such rights.* Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and *property* of the citizens, and to the preservation of good order and the public morals. *The Legislature cannot, by any contract, divest itself of the power to provide for these objects.* They belong emphatically to that class of objects which demand the application of the maxim, *salus populi suprema lex*; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. *That discretion can no more be bargained away than the power itself.*"

This so positive, so plain, so much to the point, and so decisive of this question, that it may assuredly be left here with the certainty that no argument nor sophistry that can be advanced will ever disturb it. It settles the question that no Legislature can, by any possibility, bargain away the right to pass any law that may be necessary for the security of the person or property of the citizen, whether it apparently violates a constitution or the obligations of a contract or not.

One of the principal designs in the formation of a Republican government was that it should confer upon the people the greatest amount of protection with the least restriction

of personal liberty; that the government should never interfere in any matter unless such interference was necessary to prevent injury or wrong to some of its subjects. But that when such interference *was* necessary, then the government should have all of its powers of government within its control so that it could give immediate and complete relief. This could not be done if any of those powers had been parted with, or placed in the hands of other persons.

One of the most clearly defined powers of the government, is the power to prevent any individual or collection of individuals from so using their own property or that over which they have control as to injure another. This power is necessarily inherent in the government because of the natural selfishness of mankind, and the natural desire to accumulate and grasp to himself at whatever cost or loss to others. The first purpose of a government is to protect itself from foreign enemies; the second is to protect the person of the individual member from the passion or natural destructiveness of his fellow member; third to protect his property from the cupidity and covetousness of his neighbor. One power is as necessary and vital as the other. The loss of the power to do either, destroys the government, and institutes instead, anarchy and chaos. These propositions need neither argument nor authority to sustain them. But one or two authorities may be cited, to settle all controversy.

In the case of *Charles River Bridge* v. *Warren Bridge et al.*, 11 Pet. 544, Chief Justice Taney said :

"The object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created. And in a country like ours, free, active, and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary, both for trade and travel, and are essential to the comfort, convenience and prosperity of the people. A State ought never to be presumed to surrender this power because, like the taxing power, the whole community have an interest in preserving it undiminished."

In Alden on the Science of Government, page 1, it is said:

"Government has for its great object the maintenance of justice among men. That men may live together in peace, there must be laws restraining them from injustice, and protecting them in the enjoyment of their rights. The office of government is to make and execute such laws."

In the works of John C. Calhoun. Vol. 1, page 4, is found a definition of government that may be useful here:

"The tendency to a universal state of conflict between individual and individual, accompanied by the connected passions of suspicion, jealousy, anger and revenge, followed by insolence, fraud and cruelty; and if not prevented by some controlling power, ending in a state of universal discord and confusion, destructive of the social state and the ends for which it is ordained. This controlling power wherever vested, or by whomsoever exercised, is government."

Locke defines government to be—

"The right of making laws with penalties of death, and consequently all less penalties, for regulating and preserving property, and of employing the force of the community in the execution of such laws and in the defense of the commonwealth from foreign injury, and all this *only for the public good.*" Locke's Essay on Government.

In Yeaman on the Study of Government, page 65, it is said:

"According to the system of natural liberty, the sovereign has only three duties to attend to: the duty of protecting

society from the violence and invasion of other independent societies; the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, which is the administration of justice; and the duty of erecting and maintaining certain public works and institutions."

He says further, on same page:

"The seminal idea, the keel-timber of every theory and every form of government, should be *protection*, and its success in affording protection should be the touch-stone of the experience of its workings."

Vattel says, in his Law of Nations, § 18:

"Since, then, a nation is obliged to preserve itself, it has a right to everything necessary for its preservation. For the Law of Nature gives us a right to everything, without which we cannot fulfil our obligation; otherwise it would oblige us to do impossibilities, or rather would contradict itself in prescribing us a duty, and at the same time debarring us of the only means of fulfilling it. It will doubtless be here understood, that those means ought not to be unjust in themselves, or such as are absolutely forbidden by the Law of Nature. As it is impossible that it should ever permit the use of such means, if on a particular occasion no others present themselves for fulfilling a general obligation, the obligation must, in that particular instance, be looked on as impossible, and consequently void.

By an evident consequence from what has been said, a nation ought carefully to avoid, as much as is possible, whatever might cause its destruction or that of the State, which is the same thing.

A nation or state has a right to everything that can help to ward off imminent danger, and to keep at a distance whatever is capable of causing its ruin; and that from the very same reasons that establish its right to the things necessary to its preservation."

From these observations it will be readily seen that no State should part with its right to enforce the most essential element of its existence—*the right to give protection.* If it be possible to part with this right, a government might commit

felo de se—might be self destructive. This would be absurd. The government exists through the desire, and by the consent of the governed, and can only be destroyed by the same power which created it, or by the superior strength of a foreign enemy. It cannot voluntarily part with its powers in any way.

These powers of protection to the person and property of its citizens in our form of government was retained by the States. Only one of the general powers of government was parted with by the States to the Federal Government, and that was the power to defend itself from all attacks, and each State against foreign foes; in other words, the right of self-defense, and the right to resist invasion. Whatever rights were not specially parted with, or necessary to carry out and properly enforce those powers specially granted, were reserved. The right, therefore, to protect each individual citizen from the assaults or rapacity of his neighbor, never was specially parted with by the States, nor was such power necessary to carry out and properly enforce any power specially granted to the Federal Government.

This power, therefore, specially belongs to the States. No police power belongs to the Federal Government, other than may be necessary to protect itself—its own officers—in enforcing its laws. It can prevent interference with its officers in the performance of their duties, because this is a part of the law of self-defense, and is necessary. But the United States can pass no law regulating the conduct of the citizens of any of the States with each other. It has, therefore, really no *police power*. Such power exists only in the States, and the Legis-

lature of a State cannot take it from the State. The Legislature of a State is limited by the State Constitution, and also by the purpose of its creation. It is said that the power of the Legislature of a State is unlimited, except by the constitution of the State. But this general proposition must also be accepted with the further qualification that the power of the Legislature is unlimited, except by the constitution, *and the purpose of its creation.*

The Legislature is created for the purpose of making laws for the better government of the people, and not that it may grant or give away any of the sovereign essential powers of the government. The Legislature is a mere agent of the people, and it must confine itself within the limits of its agency. All the constituents of a government are mere agents of the people, and have no powers whatever, except those conferred upon them by the people. It is well said by Judge McLean, in *Spooner* v. *McConnell et al., supra:*

"The sovereignty of a State does not reside in the persons who fill the different departments of its government, but in the people from whom the government emanated, and who may change it at their discretion. Sovereignty, then, in this country abides with the constituency, and not with the agent. And this remark is true, both in reference to the Federal and State governments."

Daniel Webster well said, in his famous reply to Hayne:

"We are all agents of the same supreme power—the people. The General Government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The National Government possesses those powers which it can be shown the people have conferred upon it, and no more. All the rest belongs to the State governments or to the people themselves."

Calhoun said, in discussing the Force Bill: Cong. Debates, Vol. 9, pt. 1, p. 537:

"It is a gross error to confound the exercise of sovereign powers with sovereignty itself; or the delegation of such powers, with the surrender of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with such limitations as he may impose; but to surrender any portion of his sovereignty to another is to annihilate the whole. Sovereignty is in its nature indivisible."

In the case of *Mechanics' etc. Bank* v. *Debolt*, 1 Ohio St. 591, the Supreme Court of that State said:

"The legislative power of the State is vested in the General Assembly. This body is elected by the people, whose representatives they are; their business is to pass laws—prescribe rules of action; their powers are limited to the passage of laws, and to the fixing of rules necessary for their government, in the performance of their legislative duties, except in those cases where, by express provision, duties other than legislative are conferred. The General Assembly have not general powers over the interests of the community, either individually or collectively, except in the exercise of legislative powers. They have no right to create institutions and fix rules for their government, except as legislators. *They are clothed for the time being with the sovereignty of the State, to be exercised by them, without any power to barter or sell it.* They cannot abridge the legislative power of the State, so that their successors will not possess the same powers that they possessed. The legislative power to repeal a law is coextensive with the power to enact it. If the legislature were to attempt to abridge the rights of a future legislature, to repeal or modify their acts, such attempted restriction would be void. If they attempted to restrict future legislation under the name of contract it would be equally void, it would be a bartering away the sovereignty of the State. * * * Who of the thousands of persons that have approached the legislature of the State for the purpose of obtaining charters, has thought or felt that he was striking a bargain with the legislature, by which the legislature was to agree that the sovereignty of government over a subject, by both parties admitted to be within its control, should be suspended?"

This case, although denying that a charter is a contract, has very many sensible and striking suggestions in it, that must incline all persons reading it to the belief that courts, although compelled to maintain the general doctrine of the Dartmouth College decision, should never think of extending it a hair's breadth beyond its strict application.

Then, under this construction of the powers of the agent where did the Legislature obtain the power to part with its very existence—the power to make laws for the protection of the people? The sovereign—the people—invested this their agent with power to make laws for their protection, but certainly never conferred the authority to part with this power. This the people retained in their own hands, and there it still must remain.

The power to make laws for the protection of the people which has reference more particularly to their conduct towards each other, so that one person in transacting his own affairs shall do so in such a manner as not to injure another in property or person, is the police power.

This power was defined by the Supreme Court of Kansas in the case of the *K. P. R. R. Co.* v. *Mower*, 16 Kansas, 573, as follows:

"It aims to regulate the intercourse of citizen with citizen, to prescribe the manner of using one's property, and pursuing one's occupation, so as not to trespass on the property or rights of others; and as such, is a power whose necessities and uses grow with the increasing complexities of our civilization and the increasing diversities in the industries and modes of life. The sphere, therefore, of its operations is ever widening. Every new use to which the forces of nature are put, calls for a new interference of this power, that such use

may not operate to the injury of others. Probably no single agency has made so large a demand for the exercise of this power as the agency of steam in locomotion."

Judge Cooley, in his work on Constitutional Limitations, page*572, says:

"The police of a State in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others."

These definitions of the police power cover and include within it the right to regulate the charges of a railroad company, so that they may not be injurious to the other citizens of the State. It is true that it will be answered to this that the individual is not compelled to use a railroad, and therefore is not necessarily injured by extortionate charges. But this is not true, in fact. Every man is compelled to use a railroad in these days. Every man has something to sell, or something to buy, or somewhere to go. He must use a railroad to carry his property to market, for his neighbor carries *his* in that way, and he cannot compete with him in the market without using the improved facilities that his neighbor does in getting it to market. It is the same with whatever he may purchase, for similar reasons, as he must use the readiest and cheapest means to get it to him, else his neighbor, having received more cheaply that which enters as an element into the cost of production, can produce more cheaply than he, and thus force him out of the market, or compel him

to sell his productions at less than cost, and thus accomplish similar results of destruction, and loss of his property. He is therefore compelled to use the railroad to carry his purchases to where he may need to use them, and it is also necessary, for similar reasons, that he should travel from place to place much more rapidly, because his neighbor does so.

Before railroads were built, other means and ways of conveying property were in common use, that are in use no longer, and therefore people are not prepared or provided with the former means of conveyance, and are necessarily compelled to use the railroads as their *only* means of carriage now. In the pre-railroad days, for instance, there was a very finely built and graded national highway from Philadelphia to St. Louis, on which were stage coaches, freight wagons, and carriages of all kinds. A person could then obtain conveyance for himself or his freight at any time. Now, the road, the stage coaches, the freight wagons and the carriages are all gone, and in their place is the railroad. Is it true, then, that a person is not compelled to use these means of conveyance unless he so chooses?

This necessity therefore existing, and people being compelled to use the railroads, is it the duty of the Government to protect the people from extortion or injustice done by them? This is a broad proposition, and is disputed by railroad men, and we shall be required to produce both reason and authority to sustain it. We have, however, the authority of this Court in the so-called "Granger cases" to sustain the position, and the doctrines laid down by this Court in those cases have, since their publication, been received universally

as the law, so far as they go—and they go far enough to settle the principle—that it is the right and duty of the Government to regulate the charges for the carriage of freight and passengers upon the railroad, because they are employed in a public business. Chief Justice Waite says, in the case of *Munn* v. *Illinois*, 94 U. S. 113:

"If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns."

And in the case of *Chicago, etc., R. R. Co.* v. *Iowa*, *Id.* 155, the same Judge says:

"Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers, in order that they may the better serve the public in that capacity. They are, therefore, engaged in a public employment, affecting the public interest, and under the decision in *Munn* v. *Illinois*, *supra*, p. 113, *subject to legislative control as to their rates of fare and freight*, unless protected by their charters."

The same doctrine was held in the case of *Peik* v. *Chicago, etc., R. R. Co.*, *Id.* 164. These cases, therefore, settle the *authority* for making this regulation, and the reasons therefor are given in the opinions that it is because they are engaged in a public employment, and being so, the legislature has a right to regulate them. Every person, then, who does business of almost any kind is compelled to use a railroad, or so nearly every person, that we may be permitted to use the term, admitting an occasional exception.

But it is said that the government never attempted to regulate the charges for carriage of freight or passengers upon the National road from Philadelphia to St. Louis, nor did it have the power to do so, as such an attempt would have

been an unwarrantable interference with individual rights, and therefore it should not attempt to regulate the railroad. There was very rarely any necessity for the government to interfere or regulate these charges on common highways, because the natural laws of competition were sufficient to prevent any extortion or over-charges for carriage. If the proprietor of any stage line, freight line, or other conveyance charged an exorbitant price, or was making more money than was ordinarily done in other kinds of business, there were a thousand men ready to put opposition lines upon the road and compete with him for trade. The road was free to everybody, and there were always men ready to institute a rivalry that would continually regulate the charges. But it is not so with a railroad between St. Louis and Philadelphia. The person or corporation in possession of a railroad must have the *exclusive* possession. The safety of persons and property necessarily require this exclusiveness. Railroads therefore are necessarily monopolies. If they are making too much money, using extortion, or becoming oppressive, other men cannot put on their carriages and open up a competing line for the carriage of freight or passengers. If they are left unrestrained by law, men must stand quietly by and see them oppress, overburden and extort from them without any remedy or relief from the burden. It is true that between St. Louis and Philadelphia there are several lines of railroad, and they compete with each other, and carry at reasonable rates. Between these points natural competition between the several lines rarely gives reason for complaint, except when pooling destroys the competition. And if there were competing lines between all points in the country there

would be very little cause for complaint, for the natural laws of competition would regulate all charges. But there are *not* such competing lines everywhere, and because of the great expense and great danger in operating them there never can be. If a railroad could be built as cheaply as a dirt-road, or if engines and cars could pass over the earth without roads, and there was as little danger from collisions at the more numerous crossings, then we should not need to be in this court. But this is impossible, and therefore some other remedy must be sought. And what remedy can there be but to look to the government, which is created for the purpose of protecting its people, where the natural laws do not give such protection? It is true the government rarely passes laws regulating the charges for the carriage of freights and passengers upon the public highways; but why? The sole and only reason why, is because there can rarely be a necessity for it. Where any natural law is of itself sufficient to secure all that is desired to the individual, the services of the artificial government—created to enforce the necessary protective law—is not needed, and therefore is not brought into operation. If every person was equally strong and equally protected against violence, there would be no law against violence and no power of government brought to enforce it. Therefore, in the case of a public common highway above cited, the natural law of competition is sufficient to give all the protection necessary; consequently no artificial law was created therefor, nor is any governmental power needed to enforce it. It enforces itself naturally and by no outside aid. But in the case of a railroad the natural law of competition cannot apply, because there can be no competition. There-

fore an artificial law is necessary, and a government is required to make and enforce it. As a general proposition, I assert that, in all cases where a natural law will accomplish all that is required, no other law should be applied or enforced. But where the natural law will *not* give all the required protection, an artificial or human law *must* be passed and enforced to give the protection necessary.

The government is created to make and enforce these artificial laws. That is the sole purpose and object of its being, and when it fails in either of these purposes it ceases to be a government. If it fails to pass the necessary laws to protect its subjects in person and property, or if it fails to enforce such laws when passed, it becomes a despotism or a farce and not a government. In the case of *Charles River Bridge* v. *Warren Bridge et al. supra*, it was said:

"The object and end of all government is to promote the happiness and prosperity of the commmunity by which it is established."

If therefore it fails in accomplishing this purpose, it fails in its objects and ends, and is useless as a government. But, it is only to be used for these purposes and ends, when necessary. It is never necessary when the required end is accomplished by natural laws. Therefore the government is only needed to interpose its power whenever natural laws fail to accomplish the object desired, and then it *must* act or it fails in the purpose for which it was created. These propositions are true beyond any controversy. A free government is one that never attempts to govern except in case of necessity, but when necessary, always governs promptly and vigorously in

defense of any of the rights of its citizens. Each individual should be absolutely free and unrestrained in every respect, except when he attempts to injuriously affect the rights of others, and then, and then only, should the government act. A corporation is under the same restriction and obligations concerning the rights of others as is an individual. For the public good, the government may invest the corporation with some of its prerogatives, such as the power of eminent domain, the power to collect tolls, etc. But these are mere attachments or incidents of the government. None of these are essential to its existence. It may part with or delegate any of these incidents without affecting its existence or endangering its stability. They are merely given to the government that it may the more readily carry out its main objects. The power of eminent domain might be entirely taken away from the government, or never conferred, and yet the government would still be as strong and vigorous without it as with it. The only result would be, that if deprived of this power, the government could not so well carry out schemes and plans for the greater convenience and comfort of its people. So with the collection of tolls and other incidental conveniences conferred ordinarily upon the government to facilitate its exercise of its grand purpose—the protection of its people. This is why the government may so readily part with these prerogatives—because by so doing it may the more effectually and readily accomplish its purpose.

But it can be readily seen there is a wide difference between parting with these incidental powers, and in parting with the vital principle of *protectio i*, as would be the parting with the police power—the power to enforce the principle *sic utere*

tuo ut alienam non lædas. When this is gone the government is gone, and it is therefore impossible that it can part with it or abridge it. If the power to prevent a corporation from injuring others was taken from the government, the creature would in fact be greater than its creator. The power would still exist in the government to prevent the *individual* from injuring the railroad company or any of its property, and the whole power of the State could and would be promptly invoked to prevent such injury, and yet the State would have no power to prevent the railroad company from injuring the *individual.* This would be a singular condition of affairs. Such power as this, placed in the hands of a corporation, would very soon be destruction of *all* government, for it would at once beget revolution. Individuals would not for a moment submit to such a subversion of all the essential principles of a government, and the overthrow of any government making such an attempt would at once follow, and would be justified in all civilized communities. Corporations should have no greater powers than individuals, except some incidental power that cannot be used to the public injury, such as the power of eminent domain. Especially should the powers of corporations which are, or may become monopolies, be very carefully guarded.

Railroad corporations are created for two purposes—the purpose of the government creating them is, that they may be a public benefit; the purpose of the corporators is that they may make money by the building and use of the railroad. The purpose of the corporator must be made subservient to that of the government, because the public benefit is greater than any individual benefit. When these two

conflict, the public must be sustained and the individual must give way. It is the same in all kinds of business—that private rights and interests are always held subject to the public rights and interests.

Can a legislature reverse this rule and declare that private rights and interests shall be paramount, and that the public shall be subservient to such rights? Such would be the necessary result of a decision in this case, that this railroad company could fix its own rates for carriage regardless of the rights of the public. A venal or corrupt legislature could therefore bargain away the rights of the public and establish over them a corporate despotism? If such be the law where would it end, and how long would "a government of the people by the people and for the people" exist in this country? The people's liberties in this country, it is believed, are not built on so doubtful or slender a foundation as this. Under our system of government, we believe it is not necessary that the people should continually stand guard over our legislatures to see that they do not bargain away their rights. The powers of legislatures are limited, so that they cannot give or bargain away the right to oppress the people. If the construction contended for by plaintiff in error is sustained, what else will be the result? It is true this corporation may not have been guilty of oppression, and may never become so. But the *power* will exist to oppress the people, and that *power* should never be entrusted to individuals. If this corporation has power to say that it will charge twenty cents for the fare of an individual for six miles, it may say it will charge twenty dollars, whenever it has the opportunity to compel it. If it be estab-

lished that the State has no power to revise or regulate its charges for fare or freight, instead of a public benefit it may become a public calamity—a public misfortune. Can the legislature create such a calamity to the public, and give away the power to abate it? If so, then the only remedy, when a government has authorized and created public oppressions, would be to overturn the government. Such cannot be the law, nor the necessity.

We have then reached these conclusions in our argument: Every person is necessarily compelled to use railroads. A railroad is necessarily a monopoly. Being such, the natural laws of trade and competition cannot apply to it. Therefore an artificial or human law is necessary to regulate it. Otherwise, being a monopoly, and man being naturally selfish and covetous, the monopoly would be used to administer to such selfishness and covetousness without regard to the rights and interests of his neighbors, and naturally to the suppression of those rights. The aid of a government, consequently, becomes necessary to make the needed artificial law, and then to enforce it.

To *be* a government, it must retain both these powers—*to make* and *to enforce*. Can the government, by a contract, part with the power to *make* or *enforce* any such necessary law?

That is the question before this Court. In this case the legislature gave charters to this railroad company, in which charters it said, apparently, that the power to make such charges as it chose to make is given to its board of directors. The whole power over the rates is, apparently, placed in the hands and under the control of the board of directors of the

railroad company. It seems to me that if the natural laws of competition will not apply to railroads—and they cannot apply in the many thousands of cases where there is only one road between points of shipment—then some other law is inevitably required, and what power can make and enforce such a law but a government? A government is an intangible, bodiless, soulless, theoretic being, existing by the general consent of the governed, solely for protection, and it must in all cases and at all times be capable and ready to give that protection. Being created by the governed for the purpose of protection, the power is necessarily given into the hands of certain persons, its agents, to be used in pursuance of the purpose for which it is created. Those persons have no right nor power to use it for any other purpose or purposes than those for which it was created, and when they *attempt* to do so, their agency ends. They cannot carry the powers of the government with them to use for any other purpose than that it was given them to be used for. They may use the emblems or outward insignia of government for other purposes, but the substance of the government is not there. The officers of the government are mere agents of the people, authorized by them to administer the government for the people's benefit, but when those agents attempt to use the powers given them for any *other* purpose, they are acting beyond the scope of their authority, and their acts are void. This is the universally accepted rule of all agencies. Therefore, when the law-making officers of the government, the legislature, attempt to give away or transfer to others the right to make the laws, they act beyond the scope of their authority, and their acts are void. In our form of govern-

ment the legislature is created for the sole purpose of making such laws as may be necessary for protection of persons and property. They have been given no other power, and when this is done, all their authority ceases. They can do nothing else than this. They can only make laws. It is their duty, and they should in all cases fulfill that duty by making all the laws that are required or may be necessary to give ample and perfect security to all persons and property within their jurisdiction. If they fail in this, they fail in the performance of their full duty.

This principle is very clearly and fully stated by Chief Justice Taney in the case of *Ohio Life and Trust Co.* v. *Debolt*, 16 How. 416. He says:

"The powers of sovereignty confided to the legislative body of a State are undoubtedly a trust committed to them, to be executed to the best of their judgment for the public good."

In Alden on the Science of Government, page 12, it is said:

"The State may be considered apart from the government, though they usually co-exist. * * Government is the agent by which the State ordinarily acts."

He calls civil society, or the people within a territory in a social condition—the State; and the agency which makes and executes laws for the State—the *Government.*

In the case of *Keith* v. *Clark*, 97 U. S. 454, Mr. Justice Bradley said, in his dissenting opinion:

"The State can only act by its constituted authorities—in other words by its government; and if that government is a usurping and illegal government, the State itself and the legal government, which takes the place of the usurping government, are not bound by its acts."

Then, does it not necessarily follow that if the legal and acting government attempts to do an illegal act, or one which it has no power or authority to do, the State is not bound by it and it cannot be enforced afterwards against the government or the State? Is there any difference in the result between the acts of a usurping government and the usurped acts of a legal government? If our proposition be true, that a legislature is only authorized to pass such laws as may be beneficial to the people, then the attempt to pass a law *not* beneficial would be an attempt to usurp authority and there can be no difference between authority usurped and usurped authority.

In Tiffany's Government and Constitutional Law it is said, in note 1 to § 106:

"Sovereignty ever inheres in the people; and they never part with it. Therefore it is never strictly correct to say that the government *per se*, is invested with the sovereign authority. The people remain sovereign whether they institute a government or not; sovereign at all times to create, to amend, to annul, or to destroy what they have created. Sovereignty, as an essential attribute of nationality, can employ as many agents to execute its authority as it deems proper, and can appoint to them the limits of their respective jurisdictions and powers. But like other agents, or agents for other purposes, they can only *exercise* the authority of their principal; they cannot possess it as their own; *and if they attempt to do so, their acts are void.* Hence, whenever we speak of granting authority, granting power, etc., let it be understood that the grant extends only to the right to exercise the authority and power in the manner and for the purpose prescribed."

The purpose prescribed for the creation of railroad corporations is that such corporations may be formed with such powers as may be necessary to carry out the general design of benefiting the public. Corporations may be formed solely

for private benefit, but such corporations can *never* be invested with the incidental powers of government, such as eminent domain, etc. These powers can only be given to corporations instituted primarily for the public benefit.

Therefore railroad corporations can be given no powers that might result in public injury, for such power would be contradictory to the purpose for which they were created.

As was said before, a government cannot commit suicide. The persons controlling or managing it may commit suicide, or part with any power in *themselves*, but the government exists the same, in every respect, as it did before, and its power and authority will only remain in abeyance until other persons appear and carry out its purposes as before. Therefore the powers of government cannot be transferred, or destroyed, or bartered to others.

A charter is a contract, but it is only a contract so far as the authority to contract is given. The legislature, being the agents of the people—merely to make for their protection necessary laws—cannot contract that they will not pass any such laws. They have power given them by the people to create artificial bodies, called public or *quasi* public corporations, but *only* such as are presumed to be for the interests of the public. It is the interest of the public alone that gives the legislatiure the power to charter or create such corporations. It must be done by a law, or an act in the nature of a law. Their power is only to pass laws, and it extends to the passage of any law that may be for the public interest, not prohibited by the constitution. The constitution of a State is a limitation only of the powers of the legislature,

In addition to the constitutional limitation, the only other limitation upon their powers is the *implied* limitation against passing any law injurious to the public, because the passage of any such law would be contrary to the object of their creation and therefore prohibited, the legislature being created only for the purpose of passing beneficial laws.

In the case of *Goszler* v. *Georgetown*, 6 Wheat. 593, the Court said:

"When a government enters into a contract, there is no doubt of its power to bind itself to any extent, *not prohibited by its Constitution.*"

In the case of *East Hartford* v. *Hartford Bridge Co.*, 10 How. 511, *supra*, Mr. Justice Woodbury said:

"This case appears to settle the principle that a legislative body cannot part with its powers by any proceeding so as not to be able to continue them. It can and should exercise them, again and again, as often as the public interests require. * * The Legislature, therefore, could not properly divest itself of such control, nor devolve it on towns or counties, nor cease, from any cause, to exercise it on all suitable occasions. Its members are made by the people agents or trustees for them on this subject, and can possess no authority to sell or grant their power over the trust to others. Nor can the public be estopped by such attempts, since the acts of their agents are to be for the public, and for its benefit, and not for themselves individually, and are under a limited authority or jurisdiction, so as to be void if exceeding it."

While this case was decided upon the principle that the grantee was a public municipal corporation—and much of the opinion was therefore devoted to a discussion of this question—yet we maintain that the very able justice who delivered the opinion, intended that the above principles of law should be considered as general over all subjects and powers

of the legislature, for in the next sentence he says: "Looking to the subject, when, as here, the grantees as well as the grantors are public bodies and are created solely for municipal and political objects, the continued right of the legislature to make regulations and changes is *still clearer*."

In § 106 of *Tiffany on Government, etc. supra*, it is said:

"There necessarily exists as incident to a sovereign and independent nation an *internal sovereignty*, inherent in the people of a nation, and which is, to a limited extent, vested in the government instituted by them. This *internal sovereignty* in its exercise has respect to the rights, duties and welfare of the individual members of the society or nation, and is represented by what is called the *police power, police rights and police duties* of the State or nation."

In § 477 Id. it said:

"According to the American theory, government has no original authority. It is an institution of the people, designed only as an instrument of administration; and all the power it possesses and can properly exercise, is a mere trust for the common good. Government is imposed upon society by the law of necessity. Thus, the public authority must be applied to the regulation and control of the public acts of the individual members of society, and also to the regulation and control of their private conduct, so far as it affects the legal rights of others. * * * In treating of government, it is necessary to remember that it possesses powers to be exercised; *but that all such powers are trusts*, and can be exercised only in accordance with the authority given, *and for the purposes for which the powers were given.* Thus the general and State governments are mere instruments of administration, each entrusted with the exercise of certain powers, over certain subjects or classes of subjects, for specific purposes. In either case, the authority by which they administer, as well as the authority administered by them or either of them, *is the authority of the public or nation*, and not the authority of the government or institution."

If the authority of the legislature comes from the people, can it be presumed that it would have power to legislate

against the people? Would the people naturally give a legislature power to give away the right to pass such laws as might subsequently be found necessary to protect them from oppression? Can it be supposed for a moment that a law would be valid declaring that hereafter no law shall be passed declaring forgery a crime, declaring extortion an offence, or creating a penalty therefor?

Then, can the legislature say by a contract, "We will not pass any law upon this subject?" They do this in effect when they contract to give the sole and irrevocable power to any person or persons to do any act by which those persons may injure or oppress their neighbor. A contract may be made by the legislature with a company of persons that they shall have the right to build a railroad from one point to another, and this contract may be made absolute and irrevocable. But, at the same time, it is well-known to both parties that the execution of this contract by the grantee is hedged around by other implied laws and provisions so that the building of it cannot inflict an injury upon other persons. It is the law, well-known when the contract is made, that, in the building of this railroad, if any private property is taken or injured just compensation for it must be made. This condition enters into and becomes a part of the contract, although not mentioned in it. But it is a general law in all such cases, and it is implied and understood when the contract is made, that the general law becomes a part of the contract and must be observed. It is also understood and implied when the contract is made authorizing a railroad to be built, that it is being built primarily for the public benefit. On this understanding the

governmental prerogatives of eminent-domain and the right to collect tolls is given to the corporation which builds it. They can be given for no other than a public purpose. Therefore when the contract is made by which these extraordinary sovereign powers are transferred to the subject, it is with the implied understanding that the road built and the work done shall always be used for the public interest. This understanding is never expressed in the contract, because it is so well known and enters so fully into the substance of the contract, and is so fully recognized as the reason upon which the whole contract stands, that it is not necessary to expressly declare it. A contract between the legislature and a corporation is said to be governed by the same rules, to be construed in the same manner, and to be carried out by the parties to it in the same spirit and as strictly and fully as a contract between individuals. It must be remembered, however, that the legislature is merely an agent of the people and its powers to contract are limited. In a contract between individuals there are always many things understood that are as much a part of the contract as those things expressly stated in it. For instance, a contract is made between A and B that B shall dig a ditch four feet wide and two feet deep from A's barn to another specified point, and when completed A shall pay B $100. This is a perfect contract of itself, but there are very many things *implied* in it that are as much a part of the contract as are the matters expressly inserted. One implied part of the contract not mentioned is, that the work of making the ditch shall be commenced and completed within a reasonable time. Another implied part of the contract is, that the

ditch shall be dug in a straight line between the two points described, as nearly as the conformation of the ground and the necessary avoidance of immovable obstacles will permit. It is implied that it shall not be cut in a zigzag or round-about way. It is an implied part of the contract that, in digging the ditch, no unnecessary injury or damage shall be done to other portions of the land through which it may run. In general and in short, it is implied and understood that the ditch shall be dug in such a way as to be a *benefit* to A, as such was the presumption on which the work was authorized to be done. And the courts will so construe the contract as to carry out, as nearly as can reasonably be done, this central idea: that the object and purpose of the ditch was intended to be a benefit to the person who caused the work to be done. Such is the case when a railroad is to be built. But suppose in this same case that A was only the agent of C and was authorized by his principal to make the contract above stated, but instead thereof A made a contract with B that he should dig the ditch in a segment of a circle between the two points, no obstacle or conformation of the ground making such a variation necessary. Should that part of the contract be valid? Or suppose that A should add to the contract with B that B should have ten cents for every barrel of water that should run through the ditch as his compensation for digging it; would that contract be valid? From this simplest form of contract, we learn that there is much more implied in all contracts than is ever expressed. For every matter expressly stated in a contract, there are at least three matters equally as important that are implied. In fact, in all contracts, all that need be expressed

are those matters that are *not* implied. It is true that things which are, or would be, implied are often expressed in contracts, but such expression is unnecessary and supererogatory, and adds nothing to the strength of the part so expressed. But this thought brings us to this point, which we previously made in this case and may be made again. It is stated in the argument of counsel that a right in a railroad company to fix the price for services it may render, is a right inherent in the nature of the grant conferred. That is: If the charter of the company had not expressly given the company the right to collect tolls and fares for the carriage of freight and passengers, that right would have naturally belonged to them by reason of their right to build and operate the railroad and their ownership of the property. This proposition I deny utterly. I take exactly the contrary position; that if the legislature had not expressly authorized the company to collect fares and charges for the carriage of passengers and freight upon their roads, they could not legally do so in a single instance.

I believe it is at last admitted by all courts that railroads are in the nature of public highways, but because of the danger from collisions and the necessity of having skilled operatives, it has been found necessary to operate them under one management or head. In the case of *Rogers* v. *Burlington*, 3 Wall. 654, this Court held that:

"Railways also, as a matter of usage, founded on experience, are so far considered by the courts as in the nature of improved highways, and as indispensable to the public interest and the successful pursuit even of local business, that a State legislature may authorize the towns and counties of the State through which a railroad passes to borrow money,

issue their bonds, subscribe for the stock of the company, or purchase the same with the view of aiding those engaged in constructing or completing such a public improvement, and that a legislative act conferring such authority is not in controvention of any implied limitation of the power of the legislature. Decisions to that effect have very much increased in number within the last few years, and are constantly increasing, both in the State and Federal Courts, until it may be said that the rule here laid down pervades the jurisprudence of the United States."

But as to the question of the right to collect toll as an inherent right, and without the express authority of the government.

In the famous case of *Charles River Bridge* v. *Warren Bridge et al.*, *supra*, Mr. Justice McLean said, in reference to a decision of Lord Tenderden, in the case of *Stourbridge Canal* v. *Wheeley et al.*, 2 Barn. and Ald. 792:

"The doctrine laid down in this case is simply this: That *the right to charge the toll must be expressly given*, or it must be clearly made out by inference."

In this same case, Chief Justice Taney said, in delivering the judgment of the Court, and speaking in reference to the case of *Stourbridge Canal* v. *Wheeley et al.*:

"This was a fair case for an equitable construction of the act of incorporation, and for an implied grant, if such a rule of construction could ever be permitted in a law of that description. For the canal had been made at the expense of the company; the defendants had availed themselves of the fruits of their labors, and used the canal freely and extensively for their own profit. Still the right to exact toll could not be implied, because such a privilege was not found in the charter."

In the case here referred to, of *Stourbridge Canal* v. *Wheeley*, the language of Lord Tenderden was:

"The canal having been made under the provisions of an act of Parliament, the rights of the plaintiff are derived entirely from that act. * * * Now it is quite certain that the company have no right *expressly* given to receive any compensation, except the tonnage paid for goods carried through some of the locks on the canal, or the collateral cuts; and it is therefore incumbent upon them to show that they have a right *clearly given by inference* from some of the other clauses."

The same doctrine was held in *Canal Co.* v. *Hustler*, 1 Barn. and Cressw. 424, and in *Dock Co.* v. *La Marche*, 8 Barn. and Cressw. 42.

In the case of *Perrine* v. *Chesapeake and Delaware Canal Co.*, 9 How. 172, Chief Justice Taney said, in giving the decision of a majority of the Court:

"It is a well settled doctrine of this Court that a corporation created by statute is a mere creature of the law, and can exercise no powers except those which the law confers upon it, or which are incident to its existence. And as no power is given to this corporation to demand toll from passengers, or from vessels on account of the passengers on board, *it is very clear that no such power can be exercised, and no such toll lawfully taken.* The principle above stated is also an answer to the argument, which places the right of the company to demand toll upon the ground that it is the absolute owner of the works and of the land it occupies, and insists that it may, therefore, like any other owner, demand compensation from any person passing over its property. The error of this argument consists in regarding the title of the company to the property in question as derived to them upon common law principles, and measuring their rights by the rules of the common law. The corporation has no rights of property, except those derived from the provisions of the charter, nor can it exercise any powers over the property it holds, except those with which the charter has clothed it. It holds the property only for the purposes for which it was permitted to acquire it—that is to effectuate the objects for which the legislature created it. And whether it may lawfully demand compensation from a person whom it permits to pass over its property must depend upon the language of the charter, and not upon the rules of the common law."

Mr Justice McLean, Mr. Justice Nelson and Mr. Justice Woodbury dissented from the opinion of the majority of the court in this case, but not one of them dissented from this proposition. Mr. Justice McLean, in his dissenting opinion, in answer to the first question submitted, which was: "Is the canal company entitled to charge the compensation or toll mentioned in the proceedings, for passengers on board the complainants' boats, passing through the canal?" said:

"I think the first question must be considered in the negative, that the company have not the right to tax passengers one dollar each, or any other sum, for passing in a boat on the canal. They have no special authority to tax passengers in the act of incorporation, and consequently they cannot exercise any powers as a corporation, except those which are given in the act."

This may then be considered as the unanimous opinion of the Court so far as this question is concerned, and to be now *res adjudicata* Therefore there is no inherent right to collect tolls, rates and fares for the carriage of freight and passengers on railroads, but that right must be expressly conferred in the charter.

This question is also settled by the decisions of the courts in the following English and American cases and text books: 1 Wilson, 115; Strange, 1238; Coke's Eliz. 710; Cooper, 47; 11 East, 476; 4 Taunt. 520; 1 Barn & Cress. 223, 424; 1 Atkyns, 815; 2 Black. Com. 47; 4 Mod. 320; 2 Roll. Ab. 171; *Barrett* v. *Stockton R. R. Co.* 2 Man & Gra. 165; *Hull Dock Co.* v. *Browne*, 2 Barn & Ad. 58; *Whiting* v. *S. & F. R. R. Co.* 25 Wis. 167, 196; *Hamilton* v. *Keith*, 5 Bush, 460; *State* v. *Boston C. & N. R. R. Co.* 25 Vt. 433; *McGregor* v. *Erie R. R. Co.* 35 N. J. 89, 115; *Beekman* v. *S. & S R. R. Co.* 3 Paige, 62;

Charles River Bridge v. *Warren Bridge*, 7 Pick. 495; Ang. on Highways, § 368 and cases cited; *Olcott* v. *Banfill*, 4 N. H. 545; *Beatty* v. *Trustee*, 4 Pet. 168; *Thorpe* v. *R. & B. R. R. Co.* 27 Vt. 146; *Boston & L. R. R. Co.* v. *Salem L. R. R. Co.* 2 Gray, 27; *Comrs.* v. *Holyoke W. P. Co.* 104 Mass. 457; *Erie & N. E. R. R. Co.* v. *Casey*, 26 Pa. St. 307.

From all these authorities and arguments we must conclude that this act of the Legislature of Illinois, under which this action originated, was an attempt to part with a portion of the police power of the State, and that such police power could not under any circumstances be contracted away by the legislature.

That it is an exercise of the police power was settled in the cases of *Munn* v. *Illinois*, and the other cases following it in 94 U. S. 113, *et. seq.*

Chief Taney, in the License Cases, 5 How. 583, said:

"But what are the police powers of a State? They are nothing more nor less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion."

In the case of *Railroad Company* v. *Fuller*, 17 Wall. 560, Mr. Justice Swayne said in reference to a smilar law to this, passed by the State of Iowa:

"If the requirements of the statute here in question were, as contended by the counsel for the plaintiff in error, regulations of commerce, the question would arise, whether, re-

garded in the light of the authorities referred to, and of reason and principle, they are not regulations of such a character as to be valid until superseded by the paramount action of Congress. *But, as we are unanimously of the opinion that they are merely police regulations, it is unnecessary to pursue the subject.*"

This should be conclusive upon this point, as there is no material difference between the law in question in that case and in this.

We have entered very fully into the reasons why we believe this police power cannot be parted with, or delegated by the legislature, and that any attempt to do so is utterly void as being beyond the power and authority of the legislature to exercise. A reference to a few more decisions upon this point may not be out of place, that no question may be made nor doubt left of this conclusion.

In the Delaware Railroad Tax Case, 18 Wall. 206, Mr. Justice Field, in giving the opinion of the Court, said, in reference to the claim that the Legislature of the State of Delaware had parted with its right to tax the corporation in question:

"The power of taxation is an attribute of sovereignty, and is essential to every independent government. As this Court has said, the whole community is interested in retaining it undiminished, and has 'a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear.' If the point were not already adjudged it would admit of grave consideration, whether the legislature of a State can surrender this power, and make its action in this respect binding upon its successors, *any more than it can surrender its police power* or its right of eminent domain."

This language leaves, at least, a very strong impression that it was the conclusion of this Court that it would be absurd to insist that the legislature of a State could surrender

either its police power or the power of eminent domain. The power of eminent domain can be delegated to a corporation for the purpose of building or maintaining a public enterprise, but a supervisory and a superior power is all the time retained by the State over it. The power of eminent domain of a railroad company is always subject to the superior power of the State, and the very rights exercised by the corporation are held subject to the same power exercised by other similar corporations, or the State. A railroad company cannot prevent another railroad company from running across its right of way, nor can it prevent the State from condemning any of its line or grounds for any other public purpose. The State can condemn miles of its track for a public highway, or can take its depot grounds for other public purposes. The power is not parted with by the State, but is merely delegated for a temporary purpose.

In the case of *The West River Bridge Co.* v. *Dix et al*, 6 How. 507, Mr. Justice Daniel, in delivering the opinion of the Court, said, in reference to a charter granted by the State of Vermont to build a bridge over which by a subsequent act a public road was laid, making the bridge in fact a free bridge and thus making valueless the property of the bridge corporation therein:

"No State, it is declared, shall pass a law impairing the obligation of contracts, yet, with this concession constantly yielded, it cannot be justly disputed, that in every political sovereign community there inheres necessarily the right and the duty of guarding its own existence, and of protecting and promoting the interests and welfare of the community at large. This power and this duty are to be exerted not only in the highest acts of sovereignty, and in the external relations of governments; they reach and comprehend like-

wise the interior polity and relations of social life, which should be regulated with reference to the advantage of society. This power, denominated the *eminent domain* of the State, is, as its name imports, paramount to all private rights vested under the government, and these last are, by necessary implication, held in subordination to this power, and must yield in every instance to its proper exercise."

The power of eminent domain being paramount to all private rights, is not the police power necessarily as much so? One is as absolutely an essential attribute of government as the other. The loss of one would be as fatal to all government as the other; and if the implied reservation of one would not impair the obligation of a contract, why would the implied reservation of the other do so? Both are equally as important and necessary to the existence and public utility of the government, and should be equally protected from being frittered or bartered away.

The same judge, in the same case above cited, further said:

"The Constitution of the United States, although adopted by the sovereign States of this Union, and proclaimed in its own language to be the supreme law for their government, can, by no rational interpretation, be brought to conflict with this attribute in the States; there is no express delegation of it by the Constitution; *and it would imply an incredible fatuity in the States to ascribe to them the intention to relinquish the power of self-government and self-preservation.*"

He further says:

"But into all contracts, whether made between States and individuals or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the pre-existing and higher authority of the laws of nature, of nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and

recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur."

In the case of *Spooner* v. *McConnell et al.*, 1 McLean, 337, that learned judge (McLean) said:

"A State cannot divest itself of its essential attributes of sovereignty. It cannot enter into a compact *not* to exercise its legislative and judicial functions, or its elective rights, because this would be to change the form of government which is guaranteed by the Federal Constitution."

The question, in principle, in this case was determined by the Supreme Court of Illinois, in 1860, in a very able opinion delivered by the same Judge who gave the opinion of the Court in the case at bar. This decision has been submitted to and recognized as the law of Illinois, at least, ever since, and has never been questioned as being sound in principle. The decision was rendered by Mr. Justice Walker, in the case of *O. & M. R. R. Co.* v. *McClelland*, 25 Ill. 140. The question at issue was whether a law, passed subsequent to the granting of the charter to the company, requiring them to fence their line of road or be liable to all damages done to stock thereon, was an impairment of the contract with the company or not. The Court said:

"In the formation of government, the great object sought is to afford protection to the citizen or subject, in the enjoyment of his rights, and thereby promote general happiness. To accomplish this most important of all purposes, adequate power must be delegated to the constituted authorities, to employ the most appropriate means, not prohibited, for the attainment of the end sought. And to maintain the order and well-being of society, it becomes the duty of government to exercise that power, and not only to exercise, *but to preserve*

it. In exercising this power it becomes a duty to maintain and preserve the person of each individual member of society from aggression or injury from others, and to maintain and preserve the general and special rights of each individual, and also each member of the community, in relation to his property. These duties devolving upon government are paramount, and in the absence of authority conferred by the fundamental law, it may well be doubted whether the legislature can alienate them to another body or organization. The power thus conferred upon government is in the nature of a trust, created by the governed, and should only be exercised by the officers, and in the mode prescribed by the organic law. * * * Government would cease to be of any great value if it were to disarm itself, by grant or otherwise, so as to be unable to exercise the power and perform the duty of protecting its citizens in the rights to secure which government was organized. If these powers were irrevocably yielded by the government to irresponsible corporations, that result must inevitably ensue. * * * The power to enact police regulations, operates upon all alike. This is a fundamental principle, and lies at the foundation of society itself. It is yielded by each member when he enters society, for the benefit of all. It is incident to and a part of the government itself, and need not be expressly reserved when it grants rights or property to individuals or corporate bodies, as they take subservient to this right. * * * When such bodies accept their charters, it is upon the implied condition that they are to exercise their rights, subject to the power of the State to regulate their actions as it may individuals. * * When brought into being, in contemplation of law such a body becomes, for most purposes, a person and a subject of the State."

This decision we submit, for clearness and soundness of principle upon the subject of the powers and duties of government, cannot be excelled in any case found in the books, and we are willing to submit the case at bar upon the foundation built by Mr. Justice Walker in that case, believing that no reasoning can overturn it.

The same doctrine was re asserted still more strongly in the case of *G. & C. U. R. R. Co.* v. *Appleby*, 28 Ill. 283, where

the principles of the case of *O. & M. R. R. Co.* v. *McClelland* were expressly re-affirmed, and the Court further said:

"It is one of the highest duties for which government is organized, to afford protection to the life and property of the governed. To license persons or artificial bodies to pursue occupations highly hazardous to the life of the citizen, or an occupation not necessarily so, in such a mode as to render it hazardous, would contravene one of the great purposes of the social compact. It would be a perversion of its powers, and contrary to the end of its creation."

In the case of *Dingman* v. *The People*, 51 Ill. 277, the Court said, in terms re-affirming all its former decisions upon this question:

"And it is the well recognized law, that the legislature has power, by enactment of general laws, from time to time, as exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety. * * * There is a broad distinction between this case and that of the *Dartmouth College* v. *Woodward, supra.* In that case there was a grant of power and authority for the government of the body, and the legislature subsequently attempted to amend their charter, so as to abridge the powers of the body, and require them to be exercised in a different mode, and by a larger number of trustees, and gave the appointment of additional trustees to the Executive of the State, and created a board of overseers, with power to inspect and control the most important acts of the trustees. There was, in that case, an effort on the part of the State to control the corporation, and to resume powers necessary to its existence, and place them partly in other hands. In this case, there was given to the university no power to regulate and control the sale of liquors within one mile of the site of their institution, but the legislature, believing it to be beneficial to the morals of the students, and promotive of education, prohibited their sale within those limits. That was manifestly but a police regulation, *and being such, had it been conferred upon that body by their charter, we entertain no doubt the legislature could have resumed it at pleasure,* * * * * we cannot consent to the proposition, *that the legislature has or can abandon the police power, or give a vested right to its exercise by a municipal or private corporation, or to private indi-*

viduals. By the exercise of such a power, if legal, the General Assembly would, probably, before the end of the present generation, find, that over many subjects of police regulation they would be powerless, having granted it to colleges, schools, or other corporations."

In the case of *Lake View* v. *Rose Hill Cem. Co.*, 70 Ill. 191, the Court, through Mr. Justice Scott, said:

"Without reference to the definitions given by law writers and courts of what is termed the police power of the State, in its more comprehensive sense, in its applications to the various relations of communities, when applied to matters like the subject of this litigation, it may be assumed that it is a power co-extensive with self-protection and is not inaptly termed the law of overruling necessity. It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. It may be exercised to control the use of property of corporations as well as of private persons. In this regard there can be no distinction that can be justly taken. So far as franchises of a corporation are *publici juris*, it has always been held, that the State may properly legislate touching them. Such legislation is not prohibited by that clause of the Constitution of the United States which forbids the passage of laws impairing the obligation of contracts, nor does it deprive such corporations of any of the substantial benefits intended to be conferred by the acts of incorporation."

In the case of *N. W. Fertilizing Co.* v. *Hyde Park*, 70 Ill. 634, the Court said:

"It was not intended when the government was framed that the legislative department should ever yield or irrevocably cede the power of governing the people in the best manner, to individuals, or to a collection of individuals. * * They intrusted the legislature with its vast powers to be exercised by them for the general good, and not to be granted beyond the power of recall to either municipal bodies or to individuals. The legislative department holds this power in trust, to be used by them and them alone, whenever the public good requires it. If they could irrevocably deprive that branch of government of the power to protect the people against crime, misdemeanors, and frauds

and oppressions, the very object and purpose of the creation of the legislative department would be defeated. It never was intended or supposed that the legislature would ever deprive themselves, or their department of government, of their constitutional power to enact wholesome laws for the protection of the citizens from wrong and oppression. * * As government is organized and maintained for the protection of the people in their lives, persons and property, and the legislature is intrusted with the enactment of laws to effectuate these objects, the presumption is that they are controlled by the maxim *Salus populi est suprema lex*, and not for the promotion of the interests of the few, to the injury of the many. * * * * * In view of what we have said, we must, therefore, hold that all persons possess their rights, whether to things tangible or intangible, subject to the general police power of the State, and that corporate bodies are not, nor can they be, held to be a privileged class in this regard. When created, they are endowed by the provisions of their charters, to the extent of the grant, with the same rights and are liable to the same duty and obedience to government as individuals. They are created persons, but not higher or superior to natural persons. To hold otherwise is to reverse the rules of construction, the theory and policy of government; to change the principles on which it is based, to encroach upon the rights of the people, and to create a power in the State beyond its control and highly dangerous to the general welfare. Such immunity to these bodies was not intended by the framers of our government, and, we have no doubt, would have been expressly prohibited if they could have imagined that such privileges would be granted, or claimed, by construction; nor can we believe the legislature supposed such exemption for such bodies would ever be claimed, or they would have expressly provided that they should be subject to the general laws of the State precisely as are individuals."

In the case of *Dunne* v. *The People*, 94 Ill. 120, the Court say:

"In matters pertaining to the internal peace and well being of the State, its police powers are plenary and inalienable. It is a power co-extensive with self-protection, and is sometimes termed, and not inaptly, the 'law of overruling necessity.' Everything necessary for the protection, safety and best interests of the people of the State may be done under this power. Persons and property may be subjected to all reasonable restraints and burdens for the common good."

In the case at bar the Court, in rendering the decision upon it, 91 Ill. 256, said on this point:

"When the general assembly brings into existence an artificial person or corporation, it may at pleasure, endow it with such faculties or powers as it may deem proper and for the benefit of the corporators and the public. It may grant or withhold powers at pleasure; but it is believed that body is powerless to confer greater or more unlimited powers than are possessed by natural persons. The power, however, may no doubt be conferred to that extent, when necessary to accomplish the end sought; but it would be contrary to the very object of the creation of government, to create bodies or artificial persons beyond the power of control by the government. To create bodies in its limits beyond the governing power of the State, bodies that are only controlled by their own will, independent of law and beyond its control, would be beyond the purpose of establishing government. It has been repeatedly held by this Court, that where a corporation is thus created, it becomes amenable to the police power of the State to the full extent that natural persons are subject to its control."

In the case of *I. C. R. R. Co.* v. *The People*, 95 Ill. 313, the Court said:

"The charter of this corporation is, beyond a doubt, a contract, under the adjudged cases in this and other States, by which the corporation acquires the powers and functions to transact such business in the mode prescribed; but it is the opinion of a majority of the Court that all this is by necessary implication subject, as all citizens are, to the legislative power of the State to define, prohibit and punish extortion."

In the case of *C. & A. R. R. Co.* v. *The People*, 67 Ill. 11, the Court said:

"What was the import of that grant, made, as it was, in broad and general terms? Clearly nothing more than that the corporation should have the same right of establishing tolls that a natural person has, when acting as a common carrier—a right to be exercised within the same limitations that the common law, in behalf of justice and public policy, imposes upon the natural man. * * * The rule forbidding

unreasonable charges was a common law rule when these charters were granted, and the companies accepted their charters with this implied limitation upon the power granted, in general terms, to establish their rates of freight."

It will be seen from these authorities that it has long been considered the law in Illinois that corporations were as amenable to the supervision of the legislature in its exercise of the police power as were individuals. When property is held either by individuals or corporations, it is alike held subject to this power, which may be exercised at all proper times, and cannot be parted with. Any other decision would overturn the whole basis upon which the police power of the State is founded. The decisions of the State Supreme Court have been acquiesced in by all persons since the State was founded, until the present case. Rights of person and property have grown up and prospered all over the State, under the belief that such was the law. Thousands of miles of railroad have been built, and millions of property have been invested in railroad enterprises, believing that it was subject to legislative regulation. Our State has prospered under this construction. A change of the law might prove destructive. It would be dangerous, at least.

In the case of *Ward* v. *Farwell et al.* 97 Ill. 593, the Court said:

"That the grant of a charter by the State to a private corporation, creates a contract between the State and the corporators of such company, is no longer an open question, and it would, therefore, be a useless occupation of time to reconsider the reasons by which that conclusion is reached. It follows therefore, where the right to do so has not been reserved in the grant, that it is not within the power of the legislature, after the acceptance of such charter, to engraft upon it any new terms or provisions without the concurrence

or assent of the corporation. Yet, in contracts of this kind, as in most of others, there are annexed to them, by implication of law, certain terms and conditions which are as much a part of the contract as those which are expressly stated; and, upon this principle, the corporators of every such company are held to impliedly agree to take the privileges and immunities conferred by the charter, subject to the right of the State to reclaim them for any manifest misuser of them. So, every private corporation, in accepting its charter, impliedly undertakes and agrees, upon condition of forfeiture, that it will exercise the rights and privileges conferred upon it in furtherance of the objects and purposes of its creation, and not otherwise, and that it will so manage and conduct its affairs that it shall not become dangerous or hazardous to the safety or well-being of the State or community in and with which it transacts its business. This view necessarily results from some of the fundamental principles which underlie our political system. The accepted theory with us is, that all political power primarily resides in the people, and that governments are instituted by them for their common safety, good order and well-being. * * * These political agencies, commonly called branches of government, are the representatives of the people in their sovereign capacity; and the powers thus conferred upon them, so far as they are essential to the attainment of the objects and purposes of the government, are held by them in trust for the people, *and it is not in their power to delegate them to others, or to contract or barter them away.*

If it be conceded that one legislature may rightfully, in any case, dispose of some portion of its legislative powers, so that the succeeding legislature would find itself possessed of less power than its predecessor, it might, upon the same principle, dispose of another portion, and so this process of diminution might go on indefinitely, until the powers of legislation would be entirely exhausted.

While we do not believe the legislature possesses any such power, yet we may concede it may, in the exercise of its legislative functions, enter into contracts by which the State will be bound to the same extent as individuals. *But all such contracts must be regarded as subject to the right or duty of the legislature, in the exercise of its police power, to adopt such reasonable laws, rules and regulations as shall be necessary for the safety, good order and well-being of the people.*"

I have made these copious extracts from the decisions of the Supreme Court of Illinois, because I believe the doctrines

there asserted to be sound law, maintained and re-asserted for over twenty years, and never seriously sought to be overturned until this case was carried up to this Court for this purpose. A decision of this Court adverse to that of the Supreme Court of Illinois, will not only overturn the settled law in that State, but it is believed will have the same result in nearly every State in the Union. Until 1870, Illinois never had any constitutional or other provision declaring that charters might be altered or amended. Such a provision was deemed unnecessary, because it was never understood or supposed that any corporation would insist that when it was created it became outside of the pale of the criminal or penal laws of the State. The old-fashioned rule was supposed to be sufficiently well understood, that corporations were on the same footing with individuals as regards the manner of using their property, without repeating it in every charter, or asserting it by a written law. If an individual was given a charter to run a ferry, or build a toll bridge or road in Illinois, it was well understood by him that his charges for toll or ferriage could be regulated by the legislature, so that he could not make his privilege oppressive to the public. If he had associated a dozen other men with him in the enterprise, did the dozen men have any greater rights than he had as an individual, under the same charter? Suppose the charter had declared that he should have the right to fix the toll for ferriage or passage over his franchise, would he have claimed that this gave him the power to use his franchise to the injury of the public? Certainly not, because the object of the charter was that it might be a benefit to the public,

and if a score of men had been incorporated for the same purpose, their powers could not have been greater.

But although this has so long been the settled law of Illinois that it will be most destructive to the interests of that State now to overturn it, the injury will not be confined to Illinois alone. Illinois, it is true, has a much larger number of miles of railroad within it than any other State, yet New York is in advance of it in the amount of money invested in railroads. Together, these two States have a much larger railroad interest than any other two States in the Union. Yet we find that New York is in the same condition with ourselves with regard to this question. In the case of *Kimball* v. *B. & A. R. R. Co.*, 70 N. Y. 569, the Court of Appeals of that State said:

"Railroad corporations hold their property and exercise their functions for the public benefit, and they are, therefore, subject to legislative control. The legislature which has created them may regulate the mode in which they shall transact their business, *the price which they shall charge for the transportation of freight and passengers*, the speed at which they may run their trains, and the way in which they may cross or run upon highways and turnpikes used for public travel. It may make all such regulations as are appropriate to protect the lives of persons carried upon railroads, or passing upon highways crossed by railroads. *All this is within the domain of legislative power, although the power to alter and amend the charters of such corporations has not been reserved.* * * * Such legislation violates no contract, takes away no property, and interferes with no vested right."

We find in another very thoroughly considered case, viz: the case of *Thorpe* v. *R. & B. R. R. Co.* 27 Vt. 140, in an opinion rendered by Redfield, Chief Justice, similar doctrines were announced. The legal ability of Judge Redfield, it is

presumed, will not be questioned, nor will it be charged that he was prejudiced *against* railroads. He says in his opinion in this case:

"We think the power of the legislature to control existing railways in this respect" (requiring them to fence their roads and build cattle guards) "may be found in the general control over the police of the country, which resides in the law making power in all free states, and which is, by the fifth article of the bill of rights of this State, expressly declared to reside perpetually and inalienably in the legislature, which is, perhaps, no more than the enunciation of a general principle applicable to all free states, and which cannot therefore be violated so as to deprive the legislature of the power, *even by express grant to any mere public or private corporation.* And when the regulation of the police of a city or town, by general ordinances, is given to such towns and cities, and the regulation of their own internal police is given to railroads to be carried into effect by their by-laws and other regulations, it is, of course, always, in such cases, subject to the superior control of the legislature. *This is a responsibility which legislatures cannot divest themselves of, if they would.*"

Judge Redfield in this case goes much farther, and asserts the doctrine as beyond doubt, that the power to regulate and revise in all things necessary for the general comfort and prosperity of the people of the State, can always be exercised by the legislature, so far as natural persons are concerned. He then says: "*And it is certainly calculated to excite surprise and alarm, that the right to do the same in regard to railways should be made a serious question.*"

He says further:

"All the cases agree that the indispensable franchises of a corporation cannot be destroyed or essentially modified. * * * But when it is attempted upon this basis to deny the power of regulating the internal police of the railroads, and their mode of transacting their general business, so far as it tends unreasonably to infringe the rights or interests of others,

it is putting the whole subject of railway control quite above the legislation of the country. * * * And while it is conceded the legislature could not prohibit existing railways from carrying freight or passengers, it is believed that beyond all question it may so regulate these matters as to impose new obligations and restrictions upon these roads materially affecting their profits, as by not allowing them to run in an unsafe condition, etc."

In the case of *Nelson* v. *V. & C. R. R. Co.* 26 Vt. 717, the same eminent judge, in giving the opinion of the Supreme Court of Vermont, said:

"It is certain, we think, that the legislature cannot impose new burdens upon corporations, under such circumstances, which are merely and exclusively of private interest and concern, and which have nothing to do with the general security, quiet and good order. But there can be no doubt doubt they have the same right of general legislation over these corporations which they have over natural persons. By general laws they may require them to conform to such regulations of a police character as they may deem for the security of the rights of the citizens generally, and most conducive to quiet and good order and the security of property."

In the case of *Commonwealth* v. *Eastern R. R. Co.* 103 Mass. 254, the Supreme Court of that State said, through Chapman, Chief Justice:

"In respect to charters for railroads, both the legislature and the corporation act as trustees of the public interest to some extent; for the corporation is intrusted with the exercise of the right of eminent domain, which is in its nature a public right, and is not to be sacrificed to uses that are exclusively private. The private interests of the stockholders are likely to have a controlling influence with the officers of the company, and it is important that the legislature should possess the power to prevent abuses to which this influence may lead. *To some extent they would possess such a power without any clause in the charter reserving it.*"

In the case of *K. P. R. R.* v. *Mower*, 16 Kansas, 573, the Supreme Court of that State, in deciding upon the validity of a

statute requiring railroads to pay all damages done to stock whether through negligence or not, said:

"It is insisted first that this act cannot apply to the plaintiff in error, because it holds under a charter granted by the territorial legislature, and therefore now incapable of change without its consent. *But the chartered rights of a corporation are not more sacred than the individual's rights of person and property, and all must give way to any legislative exercise of the police power of the State.*"

In the case of *The Commonwealth* v. *Intoxicating Liquors*, 115 Mass. 153, the Supreme Court of that State said:

"But the authority of the legislature over the property, or the use of the property, of a corporation is not lost, because no power is reserved to repeal or amend its charter. Any laws the sovereign power may find it necessary or salutary to enact regulating, controlling, restricting or prohibiting the sale of a particular kind of property for the general benefit, apply as well to the property of corporations, like the claimant, as to individuals. Such laws are in the nature of police regulations, and individuals and corporations are alike subject to them. Indeed, all property is held subject to such restriction, and it is immaterial that the restriction is imposed after the property is acquired or becomes valuable, or after the charter is granted, or before it became necessary in the judgment of the legislature to pass a law on the subject. Every such law limits, restrains, impairs and, in some cases, destroys the uses, which were previously enjoyed, of the property so made the subject of legislation, but the extent to which it may do so does not affect the validity of such laws, or their equal application to all owners of such property. They are presumed to be passed for the common good, and to be necessary for the protection of the public, and cannot be said to impair any right, or the obligation of any contract, or to do any injury in the proper and legal sense of these terms."

In the case of *Gorman* v. *Pacific R. R.*, 26 Mo. 441, the Court said:

"It is settled that a private charter is a contract between the government and the company to which it is granted, and

that, as such, it is secured by the Constitution of the United States from violation by the State conferring it. But while private charters are thus protected, it is also true that corporations, like natural persons, are subject to those regulations which the State may prescribe for the good government of the community. There is no reason why corporations should not be subject to police regulations as well as natural persons. The injury resulting from the infraction of police laws by corporations may be as great, if not greater, than those caused by the violation of them by individuals. * * The foresight of man is not competent to the task of prescribing in a charter all the regulations which time may show to be necessary for the security of the interests of the people of the State against injuries caused by the introduction of new, powerful and dangerous agents for carrying on her intercourse and commerce. The charter must be taken subject to the understanding that in its operation affecting the interests of society it will be, like individuals, liable to be controlled by such reasonable enactments as may be dictated by a sense of what is required for the preservation of the persons, lives and property of the people, such enactments not contravening the expressed or plainly implied provisions of the charter."

An exceedingly well considered case touching upon this point is the case of *Gaines* v. *Coates*, 51 Miss. 335. In this case a charter had been granted by the Mississippi Legislature to "The Planters Cotton Press, Storage and Transfer Association," in 1871, to weigh cotton coming into the city of Vicksburg. The city of Vicksburg passed an ordinance authorizing the appointment of a cotton weigher, and required that all cotton sold in the city should be weighed by him. The agent of the incorporated company disregarded the ordinance and kept on weighing cotton. The City Weigher under the ordinance filed a bill to enjoin the weigher of the "Cotton Press Association" from weighing any more cotton. One of the defences made against the injunction being maintained was, that by the act of the legislature the company had a chartered right to weigh cotton, which right could not be

taken away from them, they having accepted the charter and incorporated thereunder. In support of this position the company relied upon two sections in their charter—one section providing that "*a majority of the board of directors shall be fully authorized to do and perform all and every act and thing necessary for the business of the association, the protection of its rights and the prosecution of its interests,*" and the other requiring them at all times to keep "a pair of Fairbank's Scales, with capacity to weigh at least two thousand pounds, duly sealed by an officer authorized to perform said duty."

On the point of their chartered rights under this act, the Supreme Court of Mississippi said:

"But, upon these two sections the courts are asked to hold that the charter of the association grants a vested right, *which, in effect, amounts to an alienation of sovereignty.* It must be to this extent to be available to defeat the claim of the complainant. Some of the best authorities are advancing and declaring the inalienability of sovereignty by legislation, *even by express words.*"

In an old and famous case, closely following the decision in the Dartmouth College case, and which was very thoroughly considered by the Court, we find the same principle very early established. In the case of *The Regents of the University of Maryland* v. *Williams*, 9 Gill and J. 365–390, the Court said:

"The legislature possesses the power to regulate the internal police of the State; a political power imparted to that department of the government, *of which it is difficult to say it can entirely disrobe itself.* * * * It is difficult to suppose that the legislature, in adopting that regulation of internal police, intended to part with the whole political power of the State over the subject, and to transfer and repose it entirely in the corporation of the Medical and Chirurgical Faculty.

The corporation acquired no vested and inviolable right to that political power."

These numerous authorities seem to be in entire harmony upon this question, and it is believed have not been contradicted by a single Court of any standing in any State of the Union. It is true the Supreme Court of Missouri, in the case of *Sloan* v. *P. R. R. Co.*, 61 Mo. 24, seems to have taken other ground, under a very evident misapprehension of the meaning of the decisions upon the question, but such a decision will hardly shake the foundations of the structure built by the other very able courts of the States upon this question, supported as they are by reason and legal principles.

It may be urged in this case that the decisions of the Illinois courts were made *after* this road was built and in operation, and that therefore it is taking an unjust advantage of them. But such is not the fact. In 1852—long before this road was built, or any work done thereon—the Supreme Court of Illinois had announced as law the principles upon which the later decisions are based, and which later decisions are rather deductions and elaborations of the principles formerly announced.

In the case of *G. & C. U. P. R. Co.* v. *Loomis*, 13 Ill. 548, decided in 1852, the Supreme Court of Illinois, through Trumbull, judge, said:

"That the legislature has the power by the enactment of general laws, from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety, admits of no doubt. The provision in question is a mere police regulation, enacted for the protection and safety of the citizens of the

country, and in no manner interferes with or impairs the powers conferred on the defendants in their act of incorporation. There is nothing in the character of this or any other charter so sacred as to shield the corporators from punishment for criminal offences committed in the exercise of their corporate powers. Nor is the corporation itself above the general laws enacted for the safety of the community. The act of incorporation confers on the company certain privileges; *but in the exercise of those privileges, the corporation is just as much subject to the general police laws of the State as an individual pursuing his lawful business.*"

These numerous State authorities, so harmonious and uniform in their determination of this question, should be entitled to much weight, and should, it is respectfully submitted, be not treated lightly by this Court in its decision of this case. I feel safe in saying that not a single State Court, except the one in Missouri above referred to, has held that the police power of the State *could* be parted with by the legislature, under any circumstances. Such a thought, it is contended, never entered the mind of any Court, nor in fact did any lawyer ever argue, or attempt to urge, such an idea until after this Court had decided the "Granger cases," in 94 U. S.

In the case of *Peik* v. *Chicago, etc., R. R. Co.*, 94 U. S. 164, this Court used these words:

"In *Munn* v. *Illinois, supra*, p. 113, and *Chicago, Burlington and Quincy Railroad Co.* v. *Iowa, supra*, p. 155, we decided that the State may limit the amount of charges by railroad companies for fares and freights, *unless restrained by some contract in the charter*," etc.

The words, "*unless restrained by some contract in the charter*," encouraged the opinion among railroad lawyers that the "Granger cases" might be reviewed and their power modified by digging up some obscure "contract in the charter." The

decisions in the "Granger cases" were very unsatisfactory to the railroad attorneys of the country, and every means was sought to avoid, and if possible destroy their influence. The courts and the people, and all lawyers not interested, saw in those decisions the fact that the highest Court in the land could be relied upon to maintain the rights of the people against all oppression, foreign or domestic, and since then, it is readily to be remarked that there has been more confidence and much less distrust of monopolies amongst the people than formerly. But if the claim of counsel for plaintiff in error in this case should be sustained by this Court, of what value to the people would be the decisions in the "Granger cases?"

If this railroad company, by the decision in this case, should be allowed to fix its own rates for the carriage of freight and passengers, uncontrolled by the State authorities, restraining laws could not be enforced against other companies, because such laws are necessarily somewhat oppressive and would eventually destroy the roads restrained, because of the competition of the unrestrained roads. Consequently, the railroads of the country would, in fact, be above and beyond the law, and be greater than the government itself.

But I insist that no such meaning can be given to the words in the *Peik case*, and in other cases, as claimed for them here. It will be urged that these words, "unless restrained by some contract in the charter," apply directly to this case and take it out of the rule laid down in the "Granger cases." It will be claimed that there is a contract in this charter, or the charters to the different companies

out of which this company is created, that restrains the State from fixing, or in any way regulating, the rates of carriage upon this road. And this brings us to the second point urged for the defendant in error in this case.

II.

It is, I believe, universally settled now as the true construction of all charters, that whatever is not expressly given in the charter or not necessarily implied, is withheld. In other words, that every power of whatever kind or nature that can be exercised by the corporation must be *expressly* conferred by the terms of the act creating it, or must be *necessarily* implied from the words of the act, or must be necessary to carry out some of the powers expressly given. This has been the doctrine of this Court so often announced that it cannot now be successfully disputed. The authorities heretofore referred to settle that question, particularly the case of *Perrine* v. *Chesapeake and Delaware Canal Co. supra*, wherein the Court declares this doctrine well settled by this Court.

It is also a familiar rule of construction, that when a doubt exists as to the true and proper construction of the terms of a charter, that doubt should be resolved in favor of the State. This question is so fully settled in *Charles River Bridge* v. *Warren Bridge*, *supra*, by Chief Justice Taney, and the authorities referred to are so numerous sustaining the doctrine, that I should consider it an insult to the learning of this Court to go into a detailed statement of the authorities. Only to show how far the courts have gone in resolving those

doubts, I refer to the remark of Mr. Justice Swayne of this Court, in deciding the case of *Fertilizer Co.* v. *Hyde Park*, 97 U. S. 659. He said:

"The rule of construction in this class of cases is, that it shall be construed most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatie in the jurisprudence of this Court."

In the case of *Commonwealth* v. *Erie and Northeast R. R. Co.* 27 Pa. St. 339, Black, C. J., in rendering the judgment of the Court, said:

"That which a company is authorized to do by its act of incorporation it may do; beyond that all its acts are illegal. And the power must be given in *plain* words or by *necessary* implication. All powers not given in this direct and unmistakable manner are withheld. * * In such cases, ingenuity has nothing to work with, since nothing can be either proved or disproved by logic or inferential reasoning. If you assert that a corporation had certain privileges, show us the words of the legislature conferring them. Failing in this you must give up your claim, for nothing else can possibly avail you. *A doubtful charter does not exist; because whatever is doubtful, is decisively certain against the corporation.*"

In the case of *Thomas* v. *Railroad Co.* 101 U. S. 71, this Court said:

"We take the general doctrine to be, in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are such and such only as those statutes confer. Conceding the rule applicable to all statutes, that which is fairly implied is as much granted as what is expressed, it remains that the charter of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

It being true, then, that all doubts in a charter must be resolved in favor of the State, and that when any reasonable doubt of the meaning of any part of a charter arises, we at once must solve that doubt by saying the thing does not exist in it, and also that what is not positively and plainly expressed—or just as positively and plainly implied—in the charter, does not exist in it, let us critically examine the charters of the companies of which this railroad company is composed, and see what is plainly and clearly expressed or implied in them. It has been heretofore conceded in the argument that the charters of these companies gave their boards of directors power to fix the rates of carriage of freights and passengers. Let us see, now, if this position is correct, and if this power is exclusive. This defendant corporation is composed of four original corporations, as has been heretofore sufficiently stated.

The provisions in the charters of each of these companies concerning the powers of the directors is sufficiently set out in the stipulations and in other briefs. We will take a rapid glance at the most important parts of these charters upon this question. They are substantially alike. Sec. 2 of the charter of the Peoria and Oquawka Railroad Company, Private Laws of 1849, page 99, provides:

"The said corporation shall have the right * * to prescribe the manner in which said railroad shall be used; by what force the carriages to be used thereon may be propelled; to regulate the time and manner in which goods, effects and passengers may be transported and carried on the same, and the rates of toll on the transportation of persons or property thereon."

The charter of the Aurora Branch Railroad Company, Private Laws of 1849, page 96, sec. 6, provides:

"The said corporation is authorized to * * regulate the time and manner in which goods, effects and passengers shall be transported, taken and carried on the same, and to prescribe the manner in which the said railroad shall be used, by what force the carriages to be used thereon may be propelled, and the rate of toll for transportation of persons or property thereon as may be deemed suitable to their interests."

The charter of the Northern Cross Railroad Company, Private Laws of 1849, page 82, sec. 5, provides that the—

"Said directors shall have the same powers and authority and perform the same duties, and be governed by the same rules conferred upon and required of the directors of the Alton and Sangamon Railroad Company, by an act entitled 'An act to construct a railroad from Alton, in Madison County, to Springfield, in Sangamon County.' Approved February 27, A. D. 1847."

Section 8 of this act to construct the Alton and Sangamon R. R. Co. (Public and Special Laws of 1847, page 144,) provides:

"The said corporation may take and transport, upon said railroad, any person or persons, merchandise or other property, by the force and power of steam or animals, or any combination of them, and may fix, establish, take and receive such rates of toll for all passengers and property transported upon the same as the said directors shall from time to time establish."

The charter of the Central Military Tract Railroad Company, (Laws of 1852, page 36,) in section 5 thereof, provides:

"The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time, by their by-laws, determine, and to levy and collect the same for the use of said company."

These are all the provisions on this subject in any of the charters. We may admit that these provisions were carried

over and incorporated into the charter of the consolidated company and now form a portion of the charter of the Chicago, Burlington and Quincy Railroad Company, of which company the plaintiff in this case was a conductor. But is there anything in these charters, or either or any of them, that expressly or impliedly excludes the State of Illinois from regulating or supervising these rates of toll?

I take the position in this case that it cannot, under the rules of construction laid down by this and other courts, be held, that the State has, in any way, expressly or impliedly parted with any control or right of supervision it may otherwise have had over the rates on these roads. Apply the rules of construction so fully and clearly expressed in the opinions cited, and, at first blush, this seems to be clear, for in no case has the legislature said that the board of directors shall have the *exclusive* right to fix the rates of toll, nor has it been said or intimated in any place, in any charter, that the State of Illinois shall not have the power to regulate, supervise or change any of the rates fixed by the directors or companies.

The right given to these companies, or the directors of them, to fix rates does not necessarily exclude all other power to fix or change them. If so, the same rule would apply to many other things than the fixing of the tolls. As an example, the charter of the Peoria and Oquawka Railroad Company provides that "The said corporation shall have the right to * * prescribe the manner in which said railroad shall be used." Will it be held under this grant that the directors *alone* can prescribe how the road shall be used? It never has been questioned heretofore that the State or a municipal corpor-

ation through which this road may run, may, by laws or ordinances, direct how fast trains may be run within certain limits; that the bell shall be rung or whistle sounded at crossings of highways; that a full stop shall be made at all crossings of other lines of road, and many and various other kinds of legislation are continually being made and enforced without question, "prescribing the manner in which railroads shall be used." The intention of the charter is to give the board of directors or the corporation, primarily or in the first instance, the right to make these regulations. Without these express declarations, as we have seen, the company could never do any of these acts. Without giving them the express authority they never could collect any toll. This charter gives them this authority, but not the *exclusive* authority.

In all of the charters of which this railroad is composed, there is a right given to the board of directors or officers of the company to fix these rates. But there is nothing indicating that this was intended to be an *exclusive* right, beyond the control of the government or the State, and such *exclusive* right cannot be inferred. This was early decided by the Supreme Court of the United States, in the case of *Jackson* v. *Lamphire*, 3 Pet. 280, where the Court held, in relation to the grant of land, the patent containing no covenant to do or not to do any further act in relation to it. The Court in that case said:

"There is no contract on the part of the State that the priority of title shall depend solely on the principles of the common law, or that the State shall pass no law imposing on a grantee the performance of acts which were not necessary to the legal operation of his deed at the time it was de-

livered. It is within the undoubted power of State legislatures to pass recording acts, by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within the limited time; and the power is the same whether the deed is dated before or after the passage of the recording act. Though the effect of such a law is to render the prior deed fraudulent and void against subsequent purchasers, it is not a law impairing the obligation of contracts; such, too, is the right to pass statutes of limitations, and their effect. Reasons of sound policy have led to the general adoption of laws of both descriptions, and their validity cannot be questioned."

In the case of *Providence Bank* v. *Billings et al.*, 4 Peters, 514, Chief Justice Marshall, who rendered the opinion of the Court on the question whether the subsequent imposition of a tax upon a bank was a violation of a contract or not, no such right being reserved in the charter, said:

"This question is to be answered by the charter itself. It contains no stipulation promising exemption from taxation. The State, then, has made no express contract which has been impaired by the act of which the plaintiffs complain. No words have been found in the charter, which in themselves would justify the opinion that the power of taxation was in the view of either of the parties, and that an exemption of it was intended, though not expressed. * * * The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men. This capacity is always given to such a body. Any privileges which may exempt it from the burthens common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist." * * * * The "proposition is that a power, which is in itself capable of being exerted to the total destruction of the grant, is inconsistent with the grant, and is therefore impliedly relinquished by the grantor, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal; and therefore its truth cannot be admitted in these broad terms in any case. We must look for the exemption in the language of the instrument; and if we do not find it there, it would be going very far to insert it by construction.

The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle which has its foundation in society itself. It is granted to all for the benefit of all. It resides in government as a part of itself and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burthens, and that portion must be determined by the legislature. This vital power may be abused, but the Constitution of the United States was not intended to furnish the correction for every abuse of power which may be committed by the State governments. The interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."

This being the law as laid down concerning taxation, is it not also the law concerning the police power of the State? Or the power to compel all persons and corporations alike to obey the maxim, *sic utere tuo ut alienum non loedas?* The taxing power is no greater or more important than the power to regulate all matters within its jurisdiction for the general good of its citizens. The one power should be as well protected as the other. One is as important to the stability, the existence, and the very life of the government, as the other, and if it be the rule that the taxing power cannot be taken away by implication, most certainly upon the same ground and for the same reasons the power to regulate and restrain should not be so taken away.

But the strongest case upon this subject is the famous case of the *Charles River Bridge Co.* v. *Warren Bridge Co. et al. supra.* In that case the legislature of Massachusetts incor-

porated a company authorizing them to build a bridge where an exclusive right of ferriage formerly existed, and collect toll thereon. The same legislature afterwards authorized the building of another bridge which was to be free after a certain time, to be built at a distance of about sixteen rods at one end and about fifty at the other end from the first bridge. It was claimed that this was a violation of an implied contract between the State and the bridge company, and at all events the first bridge had a vested right in crossing passengers over the river.

After deciding that a State may pass laws divesting vested rights without becoming antagonistic to the constitution or laws of the United States, Chief Justice Taney, in giving the opinion of the Court, further says:

"It is apparent that the plaintiffs in error cannot sustain themselves here, either upon the ferry right, or the charter to the bridge, upon the ground that vested rights of property have been divested by the legislature. And whether they claim under the ferry right, or the charter to the bridge, they must show that the title which they claim, was acquired by contract, and that the terms of that contract have been violated by the charter to the Warren Bridge. In other words, they must show that the State had entered into a contract with them, or those under whom they claim, *not* to establish a free bridge at the place where the Warren Bridge is erected. Such, and such only, are the principles upon which the plaintiffs in error can claim relief in this case."

After referring to, and reciting a portion of the opinion of the court in the case of *Providence Bank* v. *Billings et al.*, *supra*, the court further say:

"The case now before the court, is, in principle, precisely the same. It is a charter from a State. The act of incorporation is silent in relation to the contested power. The argu-

ment in favor of the proprietors of the Charles River Bridge is the same, almost, in words, with that used by the Providence Bank; that is, that the power claimed by the State, if it exists, may be so used as to destroy the value of the franchise they have granted to the corporation. The argument must receive the same answer; and the fact that the power has been already exercised so as to destroy the value of the franchise, cannot in any degree affect the principle. The existence of the power does not and cannot depend upon the circumstance of its having been exercised or not.

It may perhaps be said, that in the case of the Providence Bank, this Court were speaking of the taxing power, which is of vital importance to the very existence of every government. But the object and end of all government is to promote the happiness and prosperity of the community by which it is established; *and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created.* * * * A State ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in preserving it undiminished. * * * The continued existence of a government would be of no great value, if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform transferred to the hands of privileged corporations. The rule of construction announced by the Court, was not confined to the taxing power; nor is it so limited in the opinion delivered. On the contrary it was distinctly placed on the ground that the interests of the community were concerned in preserving undiminished the power then in question; and whenever any power of the State is said to be surrendered or diminished, whether it be the taxing power or any other affecting the public interest, the same principle applies, and the rule of construction must be the same. * * While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depend on their faithful preservation. * * This act of incorporation is in the usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation for the purpose of building the bridge; and establishes certain rates of toll, which the company are authorized to take. This is the whole grant. There is no *exclusive* privilege given to them over the waters of Charles river above or below their bridge. No right to erect another bridge themselves, nor to prevent other persons from erecting one. No

engagement from the State that another shall not be erected; and no undertaking not to sanction competition, nor to make improvements that may diminish the amount of its income. Upon all these subjects the charter is silent. * * * In order then to entitle themselves to relief, it is necessary to show, that the legislature contracted *not* to do the act of which they complain; and that they impaired or in other words violated the contract by the erection of the Warren Bridge. The inquiry then is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none—no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question. In charters of this description, no rights are taken from the public, or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied. * * The whole community are interested in this inquiry, and they have a right to require that the power of promoting their comfort and convenience, and of advancing the public prosperity, by providing safe, convenient and cheap ways for the transportation of produce, and the purposes of travel, shall not be construed to have been surrendered or diminished by the State, unless it shall appear, by plain words, that it was intended to be done."

I have copied so largely from this opinion because its doctrines are so perfectly applicable to the principles involved in the case at bar. In the case at bar, can it be *implied* that the State intended to part with its natural and legitimate control over the fixing of rates; its legitimate police power? In the "Granger cases" it is decided by this Court that the State may regulate the rates of fare and freight carriage upon railroads, unless such right has been parted with in the charters. Can such parting with this right be *implied*? or must it not be *expressly* parted with? "Is there any parting

with this right to be found in that instrument? If a contract on that subject can be gathered from the charter, it must be by implication. and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question." It was said above, "the continued existence of a government would be of no great value, if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was designed to perform, transferred to the hands of privileged corporations." "Whenever any power of the State is said to be surrendered or diminished, whether it be the taxing power or any other, affecting the public interest, the same principle applies, and the rule of construction must be the same." "In order then to entitle themselves to relief, it is necessary to show, that the legislature contracted *not* to do the act of which they complain." These rules and maxims are as true and as applicable in this case as they were in the case of the *Charles River Bridge* v. *Warren Bridge*, and although that decision was rendered by a divided court, yet, it has been so often reaffirmed and cited, and so many rights have grown up under it, that its settled principles cannot now be questioned. It is entirely decisive of this case, for to sustain the doctrines argued for by counsel for plaintiff in error, this Court would be compelled either to reverse the decision in the *Charles River Bridge* case, or to decide that the police power of the State, the power to regulate and control monopolies, was inferior to the taxing power, or the power to authorize competing privileges. The decision in the *Charles River Bridge* case was based on the idea that the State might charter a rival, or

competing line or bridge for the purpose of destroying a monopoly. Then why cannot the State regulate the amount of toll to be collected for the same purpose, unless *that* right has been as expressly parted with as the other? Is there any reason why an express parting with the power of government should be required in one case and not in the other? Is not one power of the government as valuable as another? Can the Court say the taxing power is greater or more valuable to the government than any other power? All powers belonging to the government are equally important, and should be as strictly guarded. The taxing power is a power necessary to the continued maintenance of the government; the power to regulate and protect the interests of the people is a power necessary to its primary existence. The parting with the latter destroys the government on the instant, while parting with the former will destroy it in time. The one cannot be more necessary than the other. The taxing power is based solely upon the principle, that it is a consideration for the protection rendered. Without giving the protection there is no right to impose the tax. Is not, then, the right to grant protection as necessary and as important as the right to continue the protection, and can the one be parted with any more readily than the other? The power to regulate and supervise is one manner of protection. Without this power government is lost, and the right to tax departs with it.

This same principle was decided previous to the *Charles River Bridge* case by the Supreme Court of the United States in the case of the *United States* v. *Arredondo et al.* 6 Peters, 691. It was held in that case that no implication could be raised that any right had been parted with or any authority given

expressly conferred in the grant itself. It was held that the grant came from the government, to the subject, and that such a grant must be construed most favorably to the government. Many authorities were referred to as sustaining this doctrine; among others and the most important of which were the English cases, where grants from the king were construed to convey nothing by implication. "Public grants convey nothing by implication; they are construed strictly in favor of the king. Dy. 362 a, Cro. Cas. 169." "A grant by the king does not pass anything not described or referred to, unless the grant is as fully and entirely as they came to the king. Dy. 350 b, 10 Co. 65 a, 2 Mod. 2: 4 Com. Dig. 546, 548. Where the thing granted is described, nothing else passes, as 'those lands.' Hard. 225," etc. But the most direct and complete answer to the whole argument of counsel for the plaintiff in error in this case is found in the opinion of the Court rendered by Chief Justice Taney in the case of *Perrine* v. *Chesapeake and Delaware Canal Co.*, 9 How. 172, *supra*. In this case the charter gave the canal company no *express* right to charge toll for passengers passing over or through the canal, and the question arose as to whether that right could be implied. The Chief Justice said, in his opinion:

"Passengers are not mentioned in the enumeration, nor is any toll given upon a vessel on account of the persons or passengers it may have on board. Now, it is the well settled doctrine of this Court, that a corporation, created by statute, is a mere creature of the law, and can exercise no powers except those which the law confers upon it, or which are incident to its existence. And as no power is given to this corporation to demand toll from passengers or from vessels on account of the passengers on board, it is very clear that no such power can be exercised, and no such toll lawfully taken. The principle above stated is also an answer to the argument

which places the right of the company to demand toll upon the ground that it is the absolute owner of the works and of the land it occupies, and insists that it may therefore, like any other owner, demand compensation from any person passing over its property. The error of this argument consists in regarding the title of the company to the property in question as derived to them upon common law principles, and measuring their rights by the rules of common law. The corporation has no rights of property except those derived from the provisions of the charter, nor can it exercise any powers over the property it holds except those with which the charter has clothed it. It holds the property only for the purposes for which it was permitted to acquire it—that is, to effectuate the objects for which the legislature created it. And whether it may lawfully demand compensation from a person whom it permits to pass over its property, must depend upon the language of the charter, and not upon the rules of the common law."

This decision is very plain and to the point, upon the claim made by this railroad company that they are the owners of the property and have therefore a right to charge for the use of their own property. Even were that true, they are still a corporation created by the government for a public purpose, and they can only exist by consent of the government, and consequently the grant of the government is the extent of their rights.

In the case of *Head et al.* v. *Providence Insurance Co.*, 2 Cranch, 127, Chief Justice Marshall said:

"It is a general rule that a corporation can only act in the manner prescribed by law. * * * Without ascribing to this body, which in its corporate capacity is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes. To this source of its being then we must recur to ascertain its powers, and to

determine whether it can complete a contract by such communications as are in the record."

In the case of *The Richmond, etc., R. R. Co.* v. *The Louisa R. R. Co.*, 13 How. 71, the Supreme Court, by Mr. Justice Grier, said:

"It is a settled rule of construction adopted by this court, 'that public grants are to be construed strictly.' This act contains the grant of certain privileges by the public, to a private corporation, and in a matter where the public interest is concerned; and the rule of construction in all such cases is now fully established to be this: 'That any ambiguity in the terms of the contract must operate against the corporation and in favor of the public; and the corporation can claim nothing but what is clearly given by the act.' Construing this act with these principles in view, where do we find that the legislature have contracted to part with the power of constructing other railroads, even between Richmond and Fredericksburg, for carrying coal or other freight? * * Such a contract cannot be elicited from the letter or spirit of this section of the act."

So in the case at bar, "no such contract can be elicited from the letter or spirit of this act" that the State had parted with its right to regulate or control the rates of fare and freights over this road.

In the case of *Minturn* v. *Larne et al.* 23 How. 435, the Court, by Mr. Justice Nelson, held:

"It is a well settled rule of construction of grants by the legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favor of the public. This principle has been so often applied in the construction of corporate powers, that we need not stop to refer to the authorities. * * * If the legislature had intended to confer their whole power upon this corpora-

tion to establish and regulate ferries within its limits, or a power to grant exclusive ferry rights therein, a very different form of grant would have been used—one that would have expressed the intent of the law-maker to part with the exclusive power over the subject, and vest it in the grantee. In the form used, no such intent appears, or can be reached, except by a very forced interpretation, which we are not at liberty to give, according to well settled authority."

In the case of *Bank of Augusta* v. *Earle*, 13 Peters, 519, the Supreme Court, by Chief, Justice Taney, said, after referring to the repeated decisions of the Court upon the question:

"It may be safely assumed that a corporation can make no contracts, and do no acts, either within or without the State which creates it, except such as are authorized by its charter, and those acts must also be done by such officers or agents and in such manner as the charter authorizes."

The case most in point, however, is the case of *Fanning* v. *Gregoire et al.* 16 How. 524. In that case the legislature of the Territory of Iowa gave Fanning a right to establish and keep a ferry across the Mississippi river at the town of Dubuque. The act of the legislature gave Fanning an *exclusive* right, as against any other ferry not established by a direct act of the legislature, for twenty years. The defendants placed another ferry across the river by a contract with the city of Dubuque. The principal question in the case was whether the right given to Fanning was an exclusive right. Mr. Justice McLean delivered the opinion of the Court in the case. The words of the charter upon this point were "that no Court or Board of County Commissioners shall authorize any person (unless as herein provided for by this act) to keep a ferry within the limits of the town of Dubuque." The Court said:

"The prohibition on the Court and the Board of County Commissioners to grant a license for another ferry, it is urged, would seem to show an intent to make the grant exclusive. And that the reason for this might be found in the alleged fact, that when the ferry was first established, a considerable expenditure was required, and little or no profit was realized for some years. But all the judges present except one held, that the grant was not intended to be exclusive. In their opinion this view is sustained by the consideration that although the County Court and County Commissioners were prohibited from granting another license at Dubuque, yet this prohibition did not apply to the *legislature;* and as it had the power to authorize another ferry, the general authority to the council to license and establish ferries across the Mississippi river at the city, enabled the corporation, in the exercise of its discretion, to grant a license, as the legislature might have done. * * * *The exclusive right set up must be clearly expressed or necessarily inferred*, and the Court think, that neither the one nor the other is found in the grant of the plaintiff, nor in the circumstances connected with it."

In this case there was some reason for claiming that an *exclusive* right had been given. The time for which it was given was limited, the evidence showed that a large expense was necessarily incurred before it could be successfully operated, and that very little if any profit could be made over the expenses of running the ferry. and, above all other reasons, that the grant was made to Fanning *and his heirs*. A very unusual grant, where it was not intended to be an exclusive grant.

Is it possible the right in the case at bar can be held to be exclusive in the light of this decision?

In the case of the *Binghampton Bridge*, 3 Wall. 51, the Supreme Court, in a majority opinion rendered by Mr. Justice Davis, very clearly lays down the doctrine claimed in this case. He says: "A great deal of argument at the bar was devoted to the consideration of the proper rule of construc-

tion to be adopted in the interpretation of legislative contracts. In this there is no difficulty. * * * In the case of *Charles River Bridge* the rules of construction known to the English common law were adopted and applied to the interpretation of legislative grants, and the principle was recognized that charters are to be construed most favorably to the State, *and that in grants by the public, nothing passes by implication.* This Court has repeatedly since reasserted the same doctrine, and the decisions in the several States are nearly all the same way. The principle is this: that *all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist.* If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State."

The judges dissenting in this case did not dissent from the principle of law stated, but from their application to the facts of the case.

In the case of *Turnpike Co.* v. *The State*, Id. 210, Mr. Justice Nelson, in giving the unanimous opinion of this Court, said:

"The difficulty of the argument in behalf of the turnpike company, and which lies at the foundation of the defense, is that there is no contract in the charter of the turnpike company that prohibited the legislature from authorizing the construction of the rival railroad. No exclusive privileges had been conferred upon it, either in express terms or by necessary implication, and hence whatever may have been the general injurious effects and consequences to the company, from the construction and operation of the rival road, they are simply misfortunes which may excite our sympathies, but are not the subject of legal redress."

The case of *Mills et al.* v. *St. Clair County et al.* 8 How. 569, is a leading case on the point and is very apropos in principle, having been a case from Illinois. All the members of the

Court joined in the decision but Mr. Justice McLean. The opinion was rendered by Mr. Justice Catron. He said:

"Only two general principles need be invoked in construing the acts of 1819 and 1821, which are: First, that in a grant like this, designed by the sovereign power making it to be a general benefit and accommodation to the public, the rule is, that, if the meaning of the words be doubtful they shall be taken most strongly against the grantee and for the government, and therefore should not be extended by implication in favor of the grantee, beyond the natural and obvious meaning of the words employed, and if these do not support the right claimed it must fall. Such is the established doctrine of this Court, as was held in the case of The Charles River Bridge," etc.

The State Courts, relying upon the rule so fully and conclusively settled by the Supreme Court of the United States in the cases cited and others not necessary to be referred to, have gone forward holding the same doctrine and adopting the same rules of construction. A few such cases only in the State Courts will be referred to, that are most in point, showing how they understand the decisions of this Court.

In the case of *Toledo Bank* v. *Bond*, 1 Ohio St. 622, the Court said:

"If there be anything well settled in the law relating to corporations, it is, that their charters, being grants of power or authority, in derogation of the natural rights and equality of men, must be construed favorably to the public, and strictly as against the corporation, *in whose favor nothing can be claimed by implication.*"

In the case of *Shorter* v. *Smith*, 9 Ga. 517, the Court said:

"This decision," (*Charles River Bridge* v. *Warren Bridge*,) "based as it is, upon a subject particularly within the cognizance and jurisdiction of the Supreme Court of the United States, is entitled to the highest deference. Indeed we apprehend that all the State tribunals will feel bound to follow

it in a like case, until it is overruled. I may be allowed to add, that the proposition which it establishes, commands my entire assent and approbation, namely: That the grant of a public road, bridge, or ferry, confers the right to construct the improvements only, and to receive certain rates of tolls; but does not carry with it exclusive privileges, where none such are expressly given."

In the case of *State* v. *S. P. R. R. Co.* 24 Texas, 80, the Court said:

"The correct view of the subject is, that the charter is a grant of franchises by the State, and the rights granted to the company are limited by the charter. * * These franchises are the private property of the company; as such, it is subject to general laws as other property, unless the charter contains a stipulation to the contrary; and as other property, it may be regulated, though not destroyed, by subsequent legislation. There is no restriction in the charter upon the power of the State to pass these laws; they do not destroy or impair the right of property in the franchises; are not inconsistent with their general object or free enjoyment; and are merely salutary regulations as to the manner of enjoying and exercising these franchises, prescribed by the State, for the safety of its interest in this public work and to insure a faithful performance of the high trust reposed in the company by the grant. * * * But whether protected as property or as a contract, these franchises can only be protected so far as they may be granted; and the charter constitutes the limits of the grant"

After reviewing numerous authorities, this Court further said:

"These authorities will suffice to indicate the general doctrine, that a State, upon granting a charter, is presumed to retain its general power of legislation. Those who claim an exemption from this general power, must show either its relinquishment of the right to pass the law in question, in the charter, or that it is inconsistent with, and destructive of the particular rights, privileges or franchises therein enumerated and granted."

In the case of *Spring Valley W. W.* v. *S. F.* 52 Cal. 111, the Court said:

"It is a well settled rule that private corporations can exercise no powers but those expressly granted, and such as are necessarily incidental thereto."

In the very carefully considered opinion of the Supreme Court of Mississippi, in the case of *Collins* v. *Sherman*, 31 Miss. 679, it was said:

"It is said that these prior charters were contracts between the State and the grantees, which the State could not violate or impair by reason of the prohibitions of the Constitution of the United States. This is true. To the extent of the powers and privileges specially granted, and of the restrictions upon the general powers of the State contained in these charters, such provisions being within the constitutional competency of the legislature, would be binding and inviolable. * * * It is not sufficient that the charters under which the complainant claims, were contracts; but it must appear that *exclusive* privileges were thereby granted which the legislature had not power to infringe by any subsequent act granting the same rights to others *If there be no such grant of exclusive privileges, it must be presumed that the legislature, in making the grant, intended to retain all the power over the subject matter of it which they possessed, when the charter was granted.* And the doctrine is now well settled, that exclusive privileges in grants to corporations cannot be founded on implication, and that the corporation can claim nothing that is not clearly specified in the grant or embraced in its spirit. The retention of the power by the State is for the public benefit, to be exercised to that end whenever the State may deem it expedient; and therefore, she is never held to be precluded of its exercise, except by a plain and manifest intention apparent in the grant."

This opinion is a very clear and complete elucidation of the principle of law that we insist should be applied in this case. It is true that none of these cases directly decide the question with reference to extortion by railroads. But the principles decided must be as applicable to cases of this kind as to any other questions.

If the power to tax is not impaired by grants not exclusive, or the power to construct in direct competition is not lost, or

in the many other instances mentioned the power is still retained by the legislature when not expressly parted with, why can the legislature not pass an act to regulate the tolls charged by railroads when no *exclusive* privilege is conferred upon others in the charter? Why should this right be held more sacred than another? Why should the charter be construed more liberally with regard to this matter than any other? It cannot be perceived why the principles of law so fully and conclusively laid down in the foregoing cases should not apply here as fully as in the cases mentioned.

The courts of Illinois have adopted the principles laid down by the Supreme Court of the United States in the *Providence Bank* v. *Billings*, *Charles River Bridge* and other cases, probably more fully than have the courts of any other State. A reference to a few of these cases might not be amiss to establish the fact that our courts have understood these principles as applicable to questions such as we are now considering. In the case of *O. & M. R. R. Co.* v. *McClelland*, 25 Ill. 140, the Court said:

"It is a rule of interpretation, that grants made by the government are to be liberally construed in favor of the public. In other words, when such a grant is made, whilst the grantee takes the thing granted, with all the reasonable and proper means of its enjoyment, yet nothing else passes by implication "

In the case of *N. W. Fertilizing Co.* v. *Hyde Park*, 70 Ill. 634, the Court said:

"Laws, however, when enacted, must be interpreted and applied to the various human acts which they were intended to control, and, in such interpretation, the courts to whom that duty is intrusted act upon well recognized canons of

construction, among which is that one which declares that all grants by the legislature must, in cases of doubt, be construed most favorably to the government. Another is, that where an enactment will bear two different interpretations, one injurious to the public, and the other not, the courts must adopt that which will not work injury, and it is because it must be presumed that the legislature, which was created to enact just and reasonable laws to protect the governed in their rights and for the promotion of their happiness, did not intend to violate their duty and to inflict injury. And under the first, as the general assembly is intrusted with the power of legislation, it cannot be presumed, in making a grant, that they intend to divest themselves of power intrusted to them for the protection and welfare of the governed, and hence it cannot be inferred that they intended, in a grant, to yield any more than is shown by clear and express language. And especially is this so, where the grant, in its nature, is irrevocable."

In the case of *Turnpike Co.* v. *The People*, 82 Ill. 174, the Court said:

"The familiar rule of construction applicable to grants to private corporations is, that they are to be construed liberally in favor of the public, and strictly against the corporation. Whatever is not *unequivocally* granted in such acts, is taken to have been withheld."

In the case of *Gaines* v. *Coates*, 51 Miss. 335, heretofore quoted in relation to the first point made in this argument, the Court said:

"Extraordinary authority can only be conferred upon a corporation by express words; it will not be implied. If, however, the general rule is, as stated by counsel, that the right set up by the association herein, can be implied only when the language of the act is so plainly indicative of the legislative intent *as to admit of no other construction*, or if such intention must plainly appear, the right claimed by respondent is without foundation."

In this case the words used in the charter, under which a claim of exclusive rights were made, were as follows: "That a majority of the board of directors shall be fully authorized

to do and perform all and every act and thing necessary for the business of the association, the protection of its rights and the prosecution of its interests,"--words very similar to those used in the charters in question, but which have never yet been held in any State, it is confidently asserted, to grant *exclusive* privileges. In this same case it was broadly asserted that "Some of the best authorities are advancing and declaring the inalienability of sovereignty by legislation, *even by express words.*"

In the case of *Thompson* v. *N. Y. & Harlem R. R. Co.* 3 Sandf. Ch. 625, Vice Chancellor Sandford said:

"As to these positions of the complainants, the *Charles River Bridge* case with that of the *Stourbridge Canal Company* v. *Whaley*, 2 Barn & Ad. 792, is decisive against any implication of an exclusive right, when the charter is silent on the subject."

See also *Mohawk River Bridge Co.* v. *Utica & Schenectady R. R. Co.* 6 Paige 554; *Exparte Long Island R. R. Co.* 19 Wend. 37.

The opinion of the Court of Appeals of Virginia in the case of *Tuckahoe Canal Co.* v. *Tuckahoe R. R. Co.* 11 Leigh 42, is a very strong one holding in check the claim of exclusive rights. The Court say:

"Without express and definite provisions and limitations, how could we ascertain the extent of the exclusive right? Experience has proved, that monopoly is very ingenious in extending its rights and enlarging its pretensions. Give it a *carte blanche* of an implied contract and we should soon find it without other limit than the limit of professional ingenuity, and the great mischief would at once present itself, of the improvement of the country being arrested by the perpetual objection of interference with chartered rights. * * * Monopoly is not a matter of inference. It must rest its pre-

tensions upon express grant. It is a restriction upon common right, and upon legislative power, and cannot be implied."

In the case of *McIntire et al.* v. *Ingraham et al.* 35 Miss. 25, the Court said:

"The doctrine is too well settled in this country to admit of controversy at this day, 'that a corporation, created by statute, possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence.'"

In the case of *Hartford Bridge Co.* v. *Union Ferry Co.* 29 Conn. 210, the Court say:

"Ever since the decision of the *Charles River Bridge case*, in the court of Massachusetts, and afterwards in the Supreme Court of the United States, it has been held to be the settled law throughout the country, that charters are to be construed most favorably to the State. The cases are all one way, and they have accumulated in the several States until our books are filled up with them."

It would surely be profitless to accumulate any more authorities upon this point, as there seems to be no difference of opinion among the courts upon this point.

Applying, therefore, the undisputed rules so well established to this case, what must be the result. We find no word in any of the charters upon which this corporation exists that gives the corporation or directors an *exclusive* right to fix their toll. The right to regulate all tolls was by common law vested in the State. The power to prevent extortion in all cases by common law was vested in the State. No word in any of these charters can be construed as divesting the State of this common law right. The statute of the State of Illinois when this charter was granted made the common law

of England, so far as the same was applicable and of a general nature, the law of Illinois. See Rev. Stat. 1845, p. 337, Sec. 1. Charters must be construed favorably to the State and strictly against the corporation. No *exclusive* privileges will be presumed to have been granted unless so expressly declared in the charter, or which are necessarily implied therefrom. Apply these rules, and how is it possible to claim that the State is debarred by these charters from regulating the tolls upon this road to prevent extortionate charges.

It will not be claimed that the State has not a general right to pass such laws, as that question has been too firmly settled by this Court and nearly all the State courts, to be now disturbed. And that this right has been granted away in these charters, it seems to me, can upon no principle of law, justice or common sense be for a moment maintained.

What would be the result of a decision favorable to the claim of the plaintiff in error? Four-fifths of the railroads now existing in Illinois have chartered privileges identical with those of this corporation. It is probable that much of the railroad property of other States is held under the same conditions. Twelve or more of the States have passed laws fixing the maximum charges for the carriage of freights and passengers. Thirteen bills have been introduced in Congress looking toward the same result concerning freights carried across State lines and through territories.

States have the right to grant charters to railroad corporations, each of which is a contract, and if in these contracts they have bartered away the right to regulate tolls, the federal Congress can no more regulate them than can the

State legislatures. For Congress ought to have no more power to impair the obligation of a contract than a State legislature. If such laws therefore were passed, the railroads which enjoy this privileged contract would have other and greater privileges than those which did not have the benefit of so favorable a charter, and the favored railroads would soon crush the less favored ones out of existence. In a very short time after such a decision was promulgated this country would be in the hands of monopolies that would have a power much greater than that of the State or National government.

It may be true or may not, that the competition between railroads would prevent them from establishing rates injurious to the public. If the present consolidation of railroads into great corporations continues a few years longer, we will have no railroad competition, because one or two companies will own all the railroads of the country. In fact, two or three individuals now control the greater portion of the railroads of the nation. Twenty years more of such absorption of railroads as the past twenty years and three men will own all of the valuable roads at least, and a small "pool" would then utterly destroy all competition. Should these roads then be outside of legislative control, the whole internal transportation of the country will be at the mercy of soulless corporations. What would be the result of this condition of affairs needs not a seer to determine. If railroads were under the immediate direction and control of the owners, we, perhaps, need not fear any disastrous results. But they are not. The owners usually live at a distance from the road, many of

them in other countries. The roads are conducted and managed entirely by experts, who render their services for a salary, and whose salaries depend upon the amount of money they can accumulate from the operation of the road, out of which to pay dividends to the owners. The boards of directors employ for managers, superintendents, etc., the most expert railroad men they can find and pay them large salaries. These officers are expected to keep the road and property in good order and to get as much money out of it as they can. If they are successful in these two principal things they are retained, otherwise they are discharged. In carrying out these two objects, however, the people or their rights are not considered any further than may be necessary to accomplish the object sought, to-wit: the making of dividends. The owners being generally distant from the location of the road, have less sympathy with the people and less knowledge of their interests than if they were in immediate contact with them. They are in a situation similar with that non-resident landlords hold to their tenants, and whose estates are managed by agents, whose only object is to remit as much rent as possible. And we well know the results of such management of property from the effect it has had on Ireland. Wrongs, oppression, discontent, turbulence and revolution are the results.

The agents admit that the people must not be aggravated so much that they will destroy the property, and where there are competing lines of transportation, such rates must be charged as will bring the business to the road in question. Where there is no competition, however, the people must be charged such rates as they can be made to pay.

It is urged by railroad men that no governmental regulation of railroads is necessary, because competition will regulate the rates sufficiently. This is true, where there *is* competition, but it must be remembered that on the lines of railroad in this country there is competition at only about one-tenth of the points of internal transportation. Then, while competition will regulate the charges at one-tenth of the shipping points, what will regulate it at the other nine points?

It will be seen then that these companies are controlled entirely by self-interest, and that competition cannot afford a sufficient protection to the people, against the natural tendency of mankind to oppress others when such oppression will minister to their self-interest. Where, then, can the people obtain relief? Where look to for redress? We have said that the government should administer relief and the courts grant redress. But we are met with the claim in this case that the legislature has parted with the right to give us redress, and the Court is asked to so declare. If this is done and the oppression becomes too great longer to be borne, there is only one remedy left, which I hope will never become necessary in this country, to-wit: the most desperate and the last remedy which the oppressed of every land have—*the people's right of revolution.*

Legislatures and courts can prevent this; the one by making wise laws, the other by wisely construing those already made. There is no danger, so long as the people are reasonably protected in their rights, of any resort to natural rights. But we have too many evidences of the readiness to defend themselves and their rights when assailed, of men who are taught

that they are a free and independent people, to take any hazardous chances based upon their ordinary peacefulness. But this speculation is foreign to the question now before the Court. It is considered, however, proper to refer to what *may* occur in the future, so that a foundation may be properly laid now to avoid any entangling constructions that may embarrass the future should danger arise. When the decision was rendered in the Dartmouth College case, no one could anticipate the power and influence that it would have over the business of the country subsequently. No one then could imagine the power and greatness to which corporations have since grown, and this may be but the beginning of their power. It is now almost equal to that of the government itself. It is said that two of the present railroad kings have an army of one hundred thousand able-bodied, intellectual and determined men in their service; many of whom would make able generals of armies, and most of whom have more than ordinary ability and intelligence. It is true these men are good and patriotic citizens now. But, suppose that a conflict should be precipitated between the people and the corporations; is it not more than probable that their lot would be cast with those who furnish them their means of subsistence, and that the result of such a conflict would be most destructive and disastrous to the country, to civilization and to our government? Corporations are beneficial to a country and to its growth and prosperity so long as they are not oppressive to the people who come in contact with them. Accumulations of moneyed capital are necessary to carry on great enterprises and to reduce the cost of manufactured articles and the cost of transportation. But they must be

kept under reasonable control, or their natural tendency will be to continually increase their incomes by grasping more and more wherever they can safely do so. The government that is created for the protection of the person and property of all its citizens must repress this tendency. If it fails to do so, it is no longer the government it was intended to be. There is no other power that can do this. The people must rely upon the government. If that fails, the people must again take the power into their own hands and organize a government that will protect them.

While a large proportion of the complaints made against corporations are baseless and mere sensational demagogery, yet there are many genuine and meritorious causes for fault-finding that should not be overlooked.

The complaint in this case, it is submitted, is a very meritorious one. The custom established among railroad companies of charging a higher rate for the carriage of persons and property between points where no competition exists, must be checked somewhere. Otherwise all non-competing points on lines of railroad must succumb and submit to destruction in favor of the competing points. All kinds of business in which transportation is required will naturally go to the place where trasportation is the cheapest. Great cities will thus be built and small towns and villages will be destroyed. As a question of governmental policy this would be injurious to the country and the government, for it is well known that the people of the cities are more expensive and much harder to govern than those of the country, or of the towns and

villages. The government can always rely much more securely upon the people of the country places, the towns and the villages, for assistance in time of need, than upon the denizens of the cities. A much more quiet and liberty-loving people are found in the country than in the city. Nearly all revolutions, mutinies and resistance to the constituted authorities originate in the great cities. The close contact of large numbers of people seems to encourage discontent,and the discussion between them of their troubles, real or imaginary, seems to increase their discontent,—while on the other hand the quiet and peace of the country and smaller towns seem to encourage content and peace. The favor shown by railroads to the cities where competition always exists between different lines of roads and with water transportation if allowed free license, will in time change the whole country, and all business will center in the cities where this competition exists, and the cities will become overgrown and the country towns and villages proportionately depopulated. But this is only one of the evils resulting from permitting this discrimination in rates. Another is the injury done to the individual discriminated against. His business is destroyed because he cannot compete with his business rival who is located a few miles from him, where another line of transportation competes with the only one by which he can travel or ship. The prices which he can pay for produce, if he is buying or shipping produce, is governed very greatly by the cost of transportation to the point of exchange, as is the price he must pay for his own passage from place to place in transacting his business. Thus, farmers get more for their grain and produce if sold at competing points

than if sold at non-competing points. Farmers will then haul or carry their produce a longer distance to the competing point than they otherwise would do, and the extra labor and time lost in such extra carriage is so much lost to the nation and the whole people. All saving of labor and time to the people is a gain to the nation.

All wealth is said to be the result of labor, and all waste of labor is a loss of wealth. All nations desire the prosperity of their people, and the more wealth there are in a nation the more happy and contented the people are as a class. Then governments should regard and encourage whatever may assist in adding prosperity and wealth to the nation.

In addition to this, the very fact that less amounts are charged on railroads from one point than from another, induces discontent and complaint, and breeds disaffection among the people. Everything which has this tendency is injurious both to the people and the nation. Discontent encourages crime and many other wrongs, and a discontented and unhappy people is what no good citizen wishes to see in this country. To avoid this there is but one way, and that is to make laws that will remove all reasonable cause for discontent, and enforce them. The courts will be looked to to construe these laws with that object in view, and to see that no technical restrictions nor ancient dicta shall turn them aside from that purpose. It is submitted that the courts have as important a duty to perform in this respect as the legislature. Very little of the laws which govern and control us are in fact made by the legislatures. Courts seek first to learn the object and intention of the legislature in the passage of the

law, and then, by their construction of it, to give such effect as was intended. The actual words of a statute would apply to very few cases that would arise. It must be broadened and stretched out by construction to apply to the cases that it was intended to be applied to. This is the province and the duty of the courts. The courts can thus, by a narrow construction of a law, make it practically valueless, or by a broad liberal construction, can make a law that was good in intention, a benefit and a blessing to the people.

I claim in this case that the Court should look to the results that will follow as well as to the intention of the law, and to give it such a construction as will make those results beneficial to the people. This, I claim, can only be done by holding that these charters grant no exclusive privileges.

The principle established in this case by this Court will, without doubt, be very far-reaching in its results. It is in fact a test of the strength and value of the reservation made by this court in the "Granger Cases."

It was fully and finally settled in those cases that a State had a right to regulate the charges for the carriage of freight and passengers in all cases where that right was not "restrained by some contract in the charter." It ought to be settled here, once for all, that such a right *cannot* be "restrained by any contract in the charter." As well this, as that it be settled that it has *not* been so restrained in these charters. We claim that the words of reservation made in the *Peik* case were simply placed there as a matter of precaution, the question not having entered into the case at all nor

been considered by the Court, and it simply being inserted so that the Court should not be concluded or embarrassed by anything there said when the question did actually arise.

But it will be seen the people are compelled to fight step by step towards maintaining their ascendency over railroad corporations. They have been ably and fully supported and sustained by the courts thus far. While claiming that the courts and legislatures have been oppressive and destructive of their interests, railroads have never been as prosperous as they are now. Since Illinois passed laws fixing maximum rates for the carriage of freights and passengers on railroads, more miles of railroad have been built in Illinois than ever before, and those built have paid larger dividends. This proves that the people's ascendency has not been injurious to railroads. When railroad companies know that they are subject to the laws as individuals, they will not violate those laws. The people are content when they know they can have redress from the laws for any wrong done them. And thus the two, the people and the railroads, live in harmony with each other, and both go on side by side alike prospering.

But should the railroad companies once gain the ascendency, even though they were not oppressive, the people would become uneasy and suspicious and trouble would soon spring up between them. The people of this country will not submit to be ruled, or to have any power over them not chosen by themselves, and subject to removal at any time they may choose. While the people of this country need no restraining laws, ordinarily, and are happy, contented and prosperous, yet they are very jealous of their rights and will

submit to no superior power, and should it for a moment be thought, by the more intelligent and thoughtful of our people, that railroad or other corporations were above and beyond the control of whatever just laws they might make, it is not probable that they would quietly submit.

These thoughts, while they may not be considered legitimate legal argument, yet I respectfully submit that they should be considered by the highest Court in the nation, which is, within its proper sphere, responsible for the peace and prosperity of the nation and to which only a last appeal can be made.

I admit that I am very zealous in this cause, because I consider the question here presented as one of the most important and vital ever submitted to this Court. But I have faith to believe that this Court will be true to the people's interests, and will interpose at all times the shield of its protection between them and all danger to their rights. In this faith I have the honor to respectfully submit these thoughts to the Court.

JAMES McCARTNEY,

Attorney General, Illinois.

OFFICE SUPREME COURT U. S.
FILED
FEB 19 1883
JAMES H. McKENNEY, Clerk.

108-526

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Argument for Plaintiff in Error.

WIRT DEXTER.
COUNSEL FOR PLAINTIFF IN ERROR.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

STATEMENT OF CASE.

The only question in this case is, whether the charter granted to the Central Military Tract Railroad Company —now the Chicago, Burlington and Quincy—by the legislature of Illinois, in 1852, contains such a contract between the state and the company as authorizes the company to establish its own rates of fare and freight beyond interference by the state.

The solution of this question depends upon special legislation of a peculiar character, having but little relation to a class of general charters, which have been so frequent in the legislation of almost every state.

The following are the important facts in this controversy:

In March, 1873, Morgan Lewis, the complaining witness, demanded to be carried at the rate established by the legislalature of Illinois—three cents per mile—from Buda to Nepouset, Illinois, points on the Chicago, Burlington and Quincy Railroad, tendering that amount, which the conductor (Neal Ruggles) refused, and demanded the regular fare, which was more. Lewis refused to pay, and thereupon Ruggles attempted to expel him from the train. Proceedings were instituted against the conductor, Ruggles, for assault and battery, and he was fined. The case was appealed to the Supreme court of Illinois, where the judgment was affirmed (*Ruggles* v. *People*, 91 Ill., 256) and brought here on writ of error.

It appeared on the trial below that the Chicago, Burlington and Quincy Railroad Company is a corporation situated in and created by the laws of the State of Illinois, and that it owns and operates a railroad extending from Chicago, on Lake Michigan, to East Burlington, also to Peoria and to Quincy on the Mississippi river, the whole of the road being in the State of Illinois, and composed of the roads formerly known as the Aurora Branch Railroad, the Central Military Tract Railroad, the Peoria and Oquawka Railroad, and the Northern Cross Railroad. The several companies owning these roads were duly consolidated in 1856, under and by virtue of an act of the general assembly of the State of Illinois, entitled "An Act to "enable railroad and plank road companies to consolidate their "stock," approved February 28, 1854,* (App., p. 37; Pub. Laws, Ills., 1854, p. 9); and upon such consolidation assumed and took the name of the "Chicago, Burlington and Quincy "Railroad Company," under which name the corporation has ever since existed and operated the consolidated road.

---

* The acts referred to in this argument, are printed in full in an appendix filed herewith.

The act under which the consolidation was made provides that the consolidated company (Sec. 2; App. 37) "shall have "all the powers, franchises and immunities which the said re- "spective companies shall have by virtue of their respective "charters, before such consolidation."

The portion of the road on which this controversy arose formed a part of the Central Military Tract Railroad, and was owned and constructed by the Central Military Tract Railroad Company under its original and amended charter.

The original charter of that company was passed by the legislature of Illinois on February 15, 1851, and was entitled, "An Act to incorporate the Central Military Tract Railroad "Company." The charter is very brief. It names the corporators, the line of the proposed road, and confers the power to borrow money. Section third is as follows: "The said "company is hereby created and incorporated for the purpose "of organizing under an act entitled, 'An Act to provide for a "general system of railroad incorporations,' in force November "5th, 1849, and in all things shall be governed by the pro- "visions thereof, and shall be entitled to have and exercise the "powers and privileges, and be subject to the liabilities therein "enumerated." (App., p. 24. Pr. Laws, Ills. 1851, p. 191.)

It is important to the present discussion to call attention to the following clauses in the general law of November 5, 1849 (App. p. 1. Pub. Laws, Ills. 1849, p. 18):

"SECTION 21. Every such corporation shall possess the "general powers and be subject to the general liabilities and "restrictions expressed in the several powers following, that "is to say:

* * * * * * * *

"*Eighth:* To take, transport, carry and convey persons "and property on their railroad by the force and power of

"steam, of animals or any mechanical powers, or by any com-
"binations of them, and receive tolls or compensation there-
"for.

* * * * * * * *

"*Tenth.* To regulate the time and manner in which pas-
"sengers and property shall be transported and the tolls and
"compensation to be paid therefor; but such compensation for
"any passenger and his ordinary baggage, shall not exceed
"three cents per mile, unless by special act of the legislature,
"and shall be subject to alteration as hereinafter provided."

"SEC. 32. The legislature may, when any such rail-
"road shall be opened for use, from time to time alter or
"reduce the rates of toll, fare, freight, or other profits
"upon such road; but the same shall not, without the con-
"sent of the corporation, be so reduced as to produce with
"said profits less than fifteen per cent. per annum on the capi-
"tal actually paid in; nor unless, on an examination of the
"amounts received and expended, to be made by the secretary
"of state, he shall ascertain that the net income divided by the
"company from all sources, for the year then last past, shall
"have exceeded an annual income of fifteen per cent. upon
"the capital of the corporation actually paid in."

The above clause is the only provision to be found in the act of 1849 empowering the legislature to alter or reduce rates of fare and toll.

There is also the following provision in the law of 1849:

"SEC. 45. All existing railroad corporations within this state
"shall respectively have and possess all the powers and privileges,
"and be subject to all the duties and liabilities and provisions con-
"tained in this act, so far as they shall be applicable to their
"present conditions, and not inconsistent with their several char-

"ters; and all railroad companies that are now constructing their "roads may acquire title to lands necessary for that purpose "under the provisions of this act."

The act of February 15, 1851, organizing the company under the general law, was accepted by the company, and some few subscriptions made to its stock.

June 19, 1852, the legislature of Illinois passed an act described as "An Act to amend an act entitled 'An Act to incor- "porate the Central Military Tract Railroad Company.'" (App. p. 24. Pub. Laws, Ills. 1852, p. 36.)

This amendatory act was a substantial enlargement of the powers of the corporation, leaving the original charter otherwise unimpaired. It bears on its face unmistakable evidence of an intention to promote and encourage the enterprise by the grant of additional and enlarged privileges, not conferred by the original charter. It relieved the "subscribers to the stock" from the dilatory proceedings necessary to perfect the corporate organization under the original charter, and declared them "a body politic and corporate." (Sec. 1.)

It extended the authorized route of the road which was limited by the original charter to a connection with the Rock Island & LaSalle railroad, by authorizing the company to select "the most direct and eligible route towards the city of Chicago," to a point on or near the line of the railroad named in the original charter, "or of any other railroad or railroads con- "necting with or extending to the said city of Chicago." (Sec. 2.)

The authorized width of the right of way which was limited by the original charter to six rods, it increased to 200 feet.

The right to condemn private property for its use, which, in the original charter was conditional on a petition to the legislature, and its determination by law that the right was nec-

essary, it conferred directly upon the corporation. It made a grant to the corporation of all lands, materials, etc., belonging to the state, required for its use; this was not conferred by the original charter. (Sec. 3.)

It relieved the company from the limitation on its authorized capital stock to the "actual cost of constructing the road," etc., and authorized a definite capital stock with power to increase to "any sum required to be expended on account of said road." (Sec. 4.)

The original charter provided that a majority of the directors should be residents of the state. This limitation the amendatory act removed, and provided that the majority might be non-residents. (Sec. 5.)

To the power to borrow money and issue its bonds, conferred by the original charter, it added the power to make the bonds issued convertible into stock at the option of the holder. (Sec. 10.)

In this amendatory act was the following provision on the subject of rates:

"*The board of directors shall have power to establish such "rates of toll for the conveyance of persons and property upon the "same as they shall from time to time by their by-laws determine, "and to levy and collect the same for the use of said company.*"

February 11, 1853, the legislature of Illinois passed an act entitled "An Act supplemental to an act to amend the charter of "the Central Military Tract Railroad Company," which provided for an extension of said road from the town of Henderson, in Knox county, to the city of Monmouth, in Warren county. (App. p. 36. Pr. Laws Ills. 1853, p. 535.)

Section two of the supplemental act is as follows:

"All the powers, privileges and franchises given and con-

"ferred upon said company in its original and amended char-
"ters shall be and are hereby given to said company in con-
"struction of said branch road."

At the time that the charter of the Central Military Tract Railroad Company and its various amendments were passed, and up to the time of the consolidation, there were no provisions in the constitution or laws of the State of Illinois, reserving to the state any control over the rates of fare and toll to be established by railroad companies, other than those above referred to.

April 15, 1871, the legislature of Illinois passed an act entitled "An Act to establish a reasonable maximum rate "of charges for the transportation of passengers on railroads "in this state." (App. p. 40. Gross' Stats. Ills. 1871, vol. 2, p. 305.)

It provided that "all railroad corporations organized or doing "business in this state under the laws or authority thereof, "shall be limited to the rates of compensation for the transpor-"tation of passengers which are herein prescribed."

It then divided and classified the roads according to their earnings into classes A, B, C and D, providing that the rates for all railroads in class B, under which the Chicago, Burlington and Quincy railroad fell, should be three cents per mile for passengers.

Assignment of Errors.

First. The court erred in holding and deciding that the provision of the charter of the Chicago, Burlington and Quincy Railroad Company, which grants to the company the right to fix the rates for the transportation of persons and property over its road, was not a contract protected by the constitution of the United States.

Second. The court erred in holding and deciding that the act of the general assembly of the State of Illinois, entitled "An "Act to establish a reasonable maximum rate of charges for "the transportation of passengers on railroads in this state." approved April 15, 1871, and in force July 1, 1871, was valid and that it did not impair the obligation of the charter contract before that time entered into between the said State of Illinois and the Chicago, Burlington and Quincy Railroad Company, whereby the right was granted to said company to fix the rate of charges for the transportation of passengers over its said road.

Third. The court erred in holding and deciding that the grant by the General Assembly of the State of Illinois to the Chicago, Burlington and Quincy Railroad Company of the power to establish such rates of toll for the conveyance of persons or property upon its road as said company should, from time to time, by their by-laws, determine, and to levy and collect the same for the use of said company, was subject to alteration and modification by the legislature of Illinois; and that said legislature had, by an act passed subsequent to the granting of said charter to said company, taken away from said

company the right to establish the rates of toll for the conveyance of persons and property upon its said road, and to levy and collect the same for its use; and that said act did not impair the obligation of the contract between the state and the company, and did not violate the provision of the constitution of the United States, which prohibits the states from passing laws impairing the obligation of contracts.

Fourth. The court erred in holding and deciding that the plaintiff in error was not justified in the act for which he was prosecuted by the provisions of the charter of the Chicago, Burlington and Quincy Railroad Company, and the by-laws of said company passed in pursuance thereof.

Fifth. The court erred in not reversing the judgment of the court below.

Sixth. The court erred in affirming the judgment of the court below.

ARGUMENT.

Two questions are presented:

First: Whether a contract exists between the state and the railroad company by which the latter has acquired the right to establish the rates of toll over its road, and to levy and collect the same for its use.

Second: Is the obligation of such contract impaired by the act of the legislature of Illinois, entitled, "An Act to establish "a reasonable maximum rate of charges for the transpor-"tation of passengers on railroads in this state," approved April 15, 1871?

It is plain that under the original charter of 1851 the corpotors of the Central Military Tract road became invested with the right to collect such rates of toll on passengers and freight as they might choose to establish, subject to the condition that passenger rates should not be more than three cents per mile; and also, to the further condition that in case, upon an examination by the secretary of state, it should appear from the receipts and expenditures of the company that its dividends had exceeded fifteen per cent. per annum on the capital paid in, then, and not until then, the legislature might revise and alter the rates. This amounted to a contract with the railroad company that it should enjoy absolutely for its own use, whatever rates of freight it chose to establish and collect, provided only such rates of freight added to three cents per mile on passenger traffic, did not bring the profits on capital paid in beyond fifteen per cent. per year. Here was an absolute grant, protecting the railroad company

from revision of its rates, unless the profits exceeded fifteen per cent. per annum. No power on earth could compel the company to relinquish this grant. Let us see what next was done; for this was well considered legislation. Railways were not abundant at that period in the history of Illinois, and every enterprise of that nature attracted public attention, and may be presumed to involve that mutual consent of the minds of the parties concerned, which Mr. Justice Washington, in the Dartmouth College case, pronounces to be the keystone of all contracts. That this presumption is well supported in the present case appears from the order and succession and relative importance of the various steps taken between the corporators and the state.

There was, it will be remembered, a provision in the original charter that the limitation of the fare to three cents per mile might be removed only by "special act of the legislature," showing that it was the purpose of the legislature to have any increase of passenger rates considered with special reference to the public interest in each particular case.

This was done in the following year, 1852, and the right to regulate the rate of tolls which was conferred by paragraph No. 10 of the corporate powers granted in the original charter, was confirmed by a special law which also relieved the company of the three cent per mile, and the fifteen per cent. per annum limitations, in the following language:

"*The board of directors shall have power to establish such* "*rates of toll for the conveyance of persons and property upon* "*the same, as they shall from time to time by their by-laws* "*determine, and to levy and collect the same for the use of* "*said company.*"

The act of 1852 recites that it is an amendment to an act entitled: "An Act to incorporate the Central Military Tract Rail-

"road Company." Upon the subject of rates it will be seen that it follows the precise method pointed out in the original charter, by which a change of rates might be made, to wit, by special law.

The Supreme court of Illinois admit that the above charter is a contract, and that the Chicago, Burlington and Quincy Railroad Company has become entitled to the same, but in substance they say that the intention of the contract was, not that the board of directors may establish such rates of toll as they shall from time to time determine, but that the present, and any succeeding legislature, may establish for this railroad such rates of toll as they shall from time to time determine. The Supreme court of Illinois, in effect, say that it was the intention of the parties to this contract, not that the railroad company should levy and collect for its own use such rates of toll as the directors of the company might from time to time establish, but that the company should levy, and collect such rates of toll as the legislature may establish. They say (*Ruggles* v. *The People*, 91 Ill., p. 267), "there is an implied restric-"tion that this corporation in fixing the rates of toll shall make "them reasonable," and as the legislature has the power to determine what is reasonable, they conclude that the law of 1871, fixing rates, is valid.

It may be well to say, here, that the term "reasonable rate," as used by the Illinois court, does not mean reasonable in the common acceptation of the term, but merely a legislative rate: for a rate which, having regard to the cost of service and the transportation market, would be in fact most unreasonable, if prescribed by the legislature, must in the courts be taken to be the standard of absolute reasonableness.

The language of the legislature is specific, and in a contract between individuals would not occasion a moment's controversy. It is, that "The board of directors shall have power to estab-

"lish such rates of toll for the conveyance of persons and prop-
"erty as they shall, from time to time, determine." Here is no ambiguity, nothing requiring explanation. But this is not all. The second clause confirms the obvious meaning of the first—"and to levy and collect the same for the use of said company," thus supplementing the power to establish rates with a power to enforce them. By this amendment the legislature said, we have heretofore given you the right to fifteen per cent. income per annum, if you can earn it; we now enlarge that, and give you the right to enjoy all you can earn, be it more or less than fifteen per cent.

How can the presence in the amendment of 1852 of the explicit language we have quoted be accounted for, save upon the theory that it was the intention of the legislature to confer upon the company the absolute right to determine its own rates of toll for the conveyance of persons and property? The right to collect reasonable freight and fares was incident to its creation as a railroad company, and was also clearly conferred without resort to the clause under discussion.

Sec. 21, clause 8, of the original charter declares the following to be among the powers of the corporation:

"To take, transport, carry and convey persons and property
"on their railroad by the force and power of steam or ani-
"mals, or any mechanical powers, or by any combination of
"them, and receive tolls or compensation therefor."

Under this section, what was the legal status of the company? This court have said, in *St. Peters R. R. Co.* v. *Blake*, 94 U. S., 180, that the incorporation of a railroad company, as a common carrier, imposed upon it the duty to "charge only a "reasonable compensation for the carriage." This common law obligation the legislature abrogated in section 32 of the original charter, which provided that the company might

charge rates that did not carry its net profits beyond fifteen per cent. per annum. Subsequently a legislature, composed of precisely the same members, enacted that this company should have the right to establish and collect such rates as it might determine; and yet the Supreme court of Illinois say, that the result of all this was to leave the company exactly where it would have been had there been no provision on the subject either in the original charter or the amendment.

The origin of all differences between parties who approach each other to make a contract is a difference of opinion on this very point as to what is reasonable, and the execution of their contract is generally a determination of that question—always a determination of it when the mode is prescribed by which the compensation shall be fixed.

Where one party to a contract agrees to pay fifteen per cent. per annum on the capital invested for the enjoyment of the advantages secured in a certain enterprise, he is to be presumed to consider fifteen per cent. per annum a reasonable sum for him to pay; and if that same party agrees to pay whatever sum the board of directors of the company may from time to time establish, it is of the very essence of the agreement that the board of directors shall be the sole judges of the reasonableness of the charges, and the party has by his own act abandoned all right to object to the charges as unreasonable.

When this contract was made between the railroad company and the state, the legislature of Illinois possessed full power over the subject. There is nothing indicating that they withheld any portion of it, and in assenting to the terms of the contract, they passed upon the reasonableness of the power conferred upon the railway board of directors to establish rates. To say that succeeding legislatures may pass upon that question again is simply saying that they may recall and annul the contract.

If a contract was made granting to the board of directors of the railway company the right to determine its own rates, the reasonableness of that contract cannot be assailed, for whatever it was competent for the parties to agree to is always in the law reasonable. The state gave our board the right to determine the rate, and when they have so determined, we do not charge an unreasonable but a reasonable rate.

The power being granted, the extent follows; but the extent of the grant is in fact, the only reason given by the Illinois court against the construction we claim.

Chief Justice MARSHALL, in the Dartmouth College case, said:

"There can be no reason for implying in a charter, given "for a valuable consideration a power which is not only "not expressed, but is in direct contradiction to its express "stipulations." (4 Wheaton, 638.)

The implication asserted in this case is in most direct contradiction to the express stipulation of the contract, for it carries the exercise of the power to fix tolls to the opposite party in the contract.

There is no middle ground. Either the right to establish tolls belongs to the company, or to the legislature controlled by the opposite party in the contract; it cannot be exercised by both, and no contention leads to any other than one of these results. There can be no third depositary of the power.

In a contract between a state and a corporation which provides in express terms, that the corporation shall enjoy such rates of toll as it may choose to establish, is it not a most astonishing conclusion for the judicial mind to reach, that by implication, this power was reserved to the opposite party in the contract, and this, too, in a case where the language is explicit, and where there are no reservations or embarrassments in

the way of applying the ordinary signification of the words used? To reach this conclusion, the mind must have originated a rule that the proper office of the principle of implication is one of direct antagonism to the precise words of the contract.

When the legislature contracted that this company should enjoy the right to establish such tolls as would enable it to realize fifteen per cent. per annum on the capital invested, they did not mean, provided that such tolls in their judgment, and in the judgment of each succeeding legislature, should be reasonable. The terms of such a contract would be absurdly contradictory.

The naming of a specific sum or rate is only important as it makes the intention clear to confer the power; if that intention can be gathered in other ways it is equally binding.

In the first contract the legislature named a maximum of fifteen per cent. per annum net on the capital. They might have done the same in the second contract. The fact that they did not, shows that its omission was intentional, and renders its absence an argument of no importance against the obvious meaning of the language of the contract. Practically any maximum that was, or was likely to be, adopted at that day, would have turned out, in view of the improvements in railroads, to be far beyond what any railroad can now attempt to charge.

If it be said that the board of directors is a body at all times within the control of the railroad company, it may be replied that this fact was well known to the legislature at the time. And also, that it is no more within the control of the railroad company than the legislature is in the hands of the state, the opposite party to the contract, and that it was entirely competent for the parties to designate by the terms of their agreement which

of these two bodies should fix the rates of fare and freight over this railroad.

It will be remembered that the amendment of 1852, under discussion, relieved the company of the three cents per mile and fifteen per cent. per annum limitations found in the original charter of 1851, both of which were coupled with the right of the state to alter or reduce the rates.

In relation to this last contract there was a well considered withdrawal of the right to revise and alter rates, now claimed by the legislature of Illinois. This was manifested not only by the use of explicit language, which granted the right to the company to fix its own rates, but also by the omission of language reserving the power to the legislature found in the grant in the preceding contract. If the limit on the company was to remain at fifteen per cent., as first established, then it was important to retain the clause reserving to the legislature the power to revise and alter rates, for upon reaching the limit that clause might become operative. If by the amendment of 1852 there was to be no limitation upon the company, as we maintain, then the clause to alter and revise must be omitted, and upon no other theory could it have been done.

How can the right to reduce our tolls be maintained by implication from a contract which withdraws the express right to alter or reduce tolls reserved to the legislature in a previous contract between the same parties, and relating to the same railroad?

The construction which gives to the railroad company the right to fix its own rates had been acquiesced in by the state for twenty years, and it was not until it was supposed to be the interest of one of the contracting parties to deprive the other of this right, that the devices, to which we shall presently allude, have been resorted to for construing away a contract as plain as human language can express.

We are often reminded from the bench that in all contracts the cardinal question is, what was the intention of the parties? Upon what ground did the minds of the respective parties to the contract meet?

We are enlightened as to the legislative construction put upon contracts of this nature at the time this was made, by reference to the general railroad law of Illinois, of 1849, which, it will be remembered, was incorporated into the original charter of the Central Military Tract railroad, in 1851. It provided (No. 10, of the corporate powers, App. p. 11) that corporations organized thereunder should have power "*to regulate the time* "*and manner* in which passengers and property shall be trans- "ported, *and the tolls and compensation to be paid therefor*, but "such compensation for any passenger and his ordinary bag- "gage shall not exceed three cents per mile, unless by special "act of the legislature."

Then follows a provision in section 32, that the legislature may, from time to time, alter or reduce the rates whenever the profits upon the capital paid in shall exceed fifteen per cent. per annum, showing that in the opinion of the legislature of that period the first grant of power to regulate the "time and manner," etc., carried an unlimited right to fix the rates of freight, or why the limitation? Yet the grant we invoke for our protection, by an amendment of this very law, by precisely the same legislators, of the power to "determine" and "establish" is much stronger than that found in the original law of 1849.

Again it may be asked, if in the opinion of the legislature of that period the grant of the right to "regulate "the time and manner in which passengers and property "shall be transported, and the tolls and compensation to be paid "therefor," did not, standing by itself, convey the absolute right to fix such rates as the railroad company might choose,

why the necessity for the limitation found in the next clause, that the passenger rates should not exceed three cents per mile unless by special act of the legislature?

Let us review the present construction of the Supreme court of Illinois in the light of the history of that time, and the respective situation of the parties.

This court have said (95 U. S., 682): "Contracts mark the "progress of communities in civilization and prosperity." Of none is this more true than the one under discussion. The country traversed by this road was of unusual fertility, but without any other means of transportation than such as farmers could supply for themselves by the use of horses or oxen and wagon or cart, over roads that were much of the time impassable.

The state felt the importance of stimulating immigration and the construction of railways. She had attempted a system of internal improvements upon her own credit, and had most disastrously failed in the undertaking. Her only remaining resource was to entice capital from without the borders of the state.

The people, assembled in their constitutional convention of 1848, expressed their sentiments upon this question in the following language: "The general assembly shall encourage "internal improvements by passing liberal general laws of in- "corporation for that purpose."

In pursuance of this policy the state granted the rights under discussion, and the capital which the government of Illinois had in vain attempted to obtain upon the pledge of her own credit, flowed into the state in response to these clear and definite engagements, and was invested in railroad enterprises which have promoted her present greatness in population and commerce. One part of the contract has been largely executed,

and the state is in full enjoyment of the fruits thereof. Shall the other part be violated?

Under the general railroad law of 1849, all those who chose to undertake the construction of railways were allowed an income of fifteen per cent. per annum upon their capital, provided this amount could be realized from the absolute right to fix their rates of freight as they chose, and their passenger rates not to exceed three cents per mile. The benefits of this act of 1849 were extended to the corporators of the Central Military Tract Railroad Company in express terms in 1851. In 1852 the amendment under which we claim protection was passed. It contains unmistakable reference to the former charter, showing that the legislature knew that the same had been accepted, for it recites that "William McMurtry * * * and their "associates, subscribers to the stock of the Central Military "Tract Railroad Company," etc. The state had no way of compelling the corporators to accept an amendment of their charter, for the rights already granted could not, under the charter, be taken away "without the consent of the corporation," and presumably the amendment was granted at the solicitation of the corporators, and as an enlargement of their privileges.

SHAW, C. J., said (9 Gray, 492): "The grant is supposed "to be made at the solicitation of the grantee, and the form "and the terms of the particular instrument of grant prepared "by him, and submitted to the government for its allowance."

It was then, the application of William McMurtry and associates for *increased privileges* that had been found necessary to carry forward their enterprise, and it must have been so understood by the legislature. Yet, if the Supreme court of Illinois be correct in their construction, we are asked to believe that these gentlemen at that early period, with the well recognized difficulties of procuring eastern capital for the construction of western

railways, solicited the legislature for an amendment of their charter, after they had commenced their enterprise, by which they were deprived of all the guarantees on the subject of rates conferred by their original charter, and put in a position where they could not enjoy fifteen per cent. per annum on their capital, or any other sum whatsoever, save only what future legislatures might award them.

Does anybody believe that this was their purpose, or that the respective parties interested in promoting the construction of this railroad contemplated any such result?

Such a conclusion becomes doubly absurd when we reflect upon the fact that by the terms of the general law of 1849, its privileges and guarantees were extended to all existing railroad corporations within the state. So that the application of the corporators to the legislature in 1852, as construed by the Illinois court, was not only to accomplish a recall of the privileges and rights guaranteed by their original charter of 1851, but it was to place themselves in a position of singular disability, and cut them off from guarantees of the precise nature enjoyed by every other railroad company within the state formed under the general law. And we are now asked to believe that after having first secured valuable privileges in relation to that most vital question—the income they might expect to realize from their investment—they returned to the legislature and secured, by this amendment, the repeal against their own interest, of every guarantee relating to the right to establish their own rates of freight and toll.

That it had not entered the mind of the legislature as late as 1853 that the privileges of the company were diminished by the amendment of 1852, appears from the supplemental act to amend the charter of the Central Military Tract Railroad Company, approved by the Illinois legislature February 11, 1853, in which the legislature used this language: "All the

"powers, privileges and franchises given and conferred upon "said company in its original and amended charter, shall be "and are hereby given to said company in the construction of "said branch road."

It is not to be presumed that the legislature intended to confer upon the branch road privileges not then held by the main road. This is certainly very remarkable language to be used by the legislature, if at that time they understood that the amendment of 1852 was a curtailment, and not an enlargement of the privileges conferred by the original charter.

If the policy of the state in 1852 was such as is indicated by the construction now given by the Supreme court of Illinois, it is singular that the legislature did not repeal the general railroad law of 1849. This law remained in force until the adoption of a new policy by the constitution of 1870, but was not expressly repealed until 1872; and under its provisions it was at all times open for any company to build a railway and obtain the irrepealable right to control its rates until they should exceed a fifteen per cent. per annum dividend of profits upon its capital, which, subsequent experience has proved is more than any railway in Illinois can ever hope to divide.

We are justified in the conclusion that not only was the right to regulate its own rates of fare and freight granted to the railway company by the express language of the charter of 1852, but also that the previous charter, of which the act of 1852 was amendatory, conferring upon the company the right to regulate its rates until the sum divided as net profit should exceed fifteen per cent. per annum, no less than the fact of the continuance upon the statute book of Illinois of a general law for eighteen years thereafter, granting the same privileges of fifteen per cent. per annum profit to all companies that would build railways in Illinois, revealed the general policy of the state con-

firming the claim we now make. The words of our charter are very clear, and this contemporaneous history shows that the legislature understood and intended precisely what it said. The history of that time, and the situation of the parties, alike confirm us in the construction of this contract, authorized by its plain terms.

If the right was not conferred upon the railroad company to regulate its own rates, it must be from some reason arising out of the incapacity of the contracting parties.

The Supreme court of Illinois further say (*Ruggles* v. *The People*, 91 Ill., at p. 261): "When the general assembly "brings into existence an artificial person or corporation, it "may, at pleasure, endow it with such faculties or powers as "it may deem proper and for the benefit of the corporators "and the public. It may grant or withhold powers at pleas-"ure; but it is believed that body is powerless to confer "greater or more unlimited powers than are possessed by "natural persons."

The substance of this is, that the legislature of Illinois never possessed the power to confer upon railroad corporations any greater rights than those enjoyed by natural persons. The argument from this assumption being that as natural persons in a like business are subject to control, corporations must also be.

What have the rights of the natural person to do with the contract under discussion?

"The board of directors shall have the power to establish "such rates of toll for the conveyance of persons and property "upon the same as they shall, from time to time, by their by-"laws, determine, and to levy and collect the same for the use "of said company."

There is no reference here to any infirmities or disabilities

of the natural person. If any such exist, whatever they may be, so far as the terms of our charter go, we clearly contracted against them, and by no argument of analogy between the two, can our rights be limited.

It is only recently that this limitation upon the power of the state to contract has been intimated by the courts of Illinois. This doctrine has never received the slightest support here.

Chief Justice MARSHALL, in the Dartmouth College case, (4 Wheaton, 518,) in enumerating the properties conferred by charter upon a corporation, said:

"Among the most important are immortality and individu-
"ality. * * * * * * * * By these means a per-
"petual succession of individuals are capable of acting for the
"promotion of the particular object like one immortal being."

So far as the property of immortality goes, the Supreme court of Illinois seem to be in error in limiting the chartered powers to those of the natural person. Certainly it must be admitted that the right of eminent domain, by virtue of which a corporation condemns for its own use private property, is a right not inherent in the natural person. Nor does perpetual exemption from taxation belong to the natural person.

In the case of *Northwestern University* v. *People*, 99 U. S. 309, this court sustained the perpetual exemption from taxation granted by the legislature of Illinois to all property belonging to the university. As an exercise of power this goes far beyond the present case. The most vital power to the existence of the state, and the last to be parted with, is that of taxation, for when once gone it is entirely gone, and the full extent of the evil, whatever it may be, continues without amelioration; whereas a power of the kind under discussion will be constantly modified and lessened by the fact of subsequent competition.

The Illinois court ignore the essential fact that a franchise or privilege granted by the state, whether to a corporation or an individual, is in its very nature a power not possessed by natural persons.

In *Bank of Augusta* v. *Earle*, 13 Peters, 519, (at p. 595) this court thus defined franchises:

"Franchises are special privileges conferred by government, "on individuals, and which do *not belong to the citizens of the* "*country* generally of common right, * * * and in "this country no franchise can be held which is not derived "from the law of the state."

The theory of limiting all contracts made by the state with corporations to the powers and functions belonging to the natural person, is very novel, very modern, and belongs exclusively, so far we know, to the Supreme court of Illinois. It has no foundation in authority or analogy, and is one of those judicial spectacles which recalls with great force the language of Chief Justice MARSHALL, in relation to that clause of the federal constitution under which we now seek protection. In *Fletcher* v. *Peck*, 6 Cranch, 137, he said:

"Whatever respect might have been felt for the state sover- "eignties, it is not to be disguised that the framers of the con- "stitution viewed with some apprehension the violent acts which "might grow out of the feelings of the moment; and that the "people of the United States in adopting that instrument, "have manifested a determination to shield themselves and "their property from the effects of those sudden and strong "passions to which men are exposed. The restrictions on the "legislative power of the states are obviously founded in this "sentiment; and the constitution of the United States contains "what may be deemed a bill of rights for the people of each "state."

This describes exactly what has occurred. It was the original policy of the State of Illinois to trust to competition to regulate railroad rates. Under that policy, from about two hundred miles, when the charter under discussion was granted, she has now within her borders nearly eight thousand miles of railroad, and rates have year by year steadily decreased; but, animated by that keen desire which the average granger feels to be the highest exemplification of freedom, to legislate as to the terms upon which he shall enjoy the use of other people's property, came the "sudden and strong passions" which have spent their force, not upon what the contracts in good faith really mean, but upon the supposed advantages obtained by one of the contracting parties, and that which has followed is precisely that which might be expected, and what the framers of our government foresaw, whenever one party to a contract should be permitted to construe it. Novel distinctions have been originated and a variety of considerations touching the supposed hardship of the situation have been thrown in as reasons for the overthrow of these contracts. Justice is straightforward and simple. There never was any ground for questioning the meaning of words like these:

"The board of directors shall have power to establish such "rates of toll for the conveyance of persons and property upon "the same, as they shall from time to time by their by-laws "determine, and to levy and collect the same for the use of said "company."

And it is a startling commentary upon the all-pervading force of public clamor in popular governments, that a very respectable body of jurists upon the highest bench of the fourth commonwealth in the union, have conducted themselves to the conclusion that what the parties, who used the above language, really intended was, that the people, who for all time to come were to use this railroad, was the party that by the terms of

the contract was really intended to exercise the power to fix the rates.

The Supreme court of Illinois also say:

"It has been repeatedly held by this court, that where a "corporation is thus created, it becomes amenable to the po- "lice powers of the state to the full extent that natural persons "are subject to its control." And they conclude that as it can be required of natural persons, that they transact this class of business at reasonable rates, it follows that a corporation must be subject to the same conditions.

This proposition has no force except as it involves a denial of the power of the state to make a contract with a corporation giving it the right to fix its rates of toll. For if the state had the power to make such a contract, and did make it, then it follows that upon no pretense of police power, or any other reserved power, can the grant be recalled or curtailed by any branch of the state government; and its legislative control under whatever name, is limited to those particulars not included in the grant to the company.

The power of the state to make binding contracts of this nature is now recognized by all courts as one of the attributes of its sovereignty.

In *State Bank* v. *Knoop*, 16 How., U. S., 369, this court said (at p. 389):

"There is no constitutional objection to the exercise of the "power to make a binding contract by a state. * * * A "denial of this, is a denial of state sovereignty. It takes from "the state a power essential to the discharge of its functions as "sovereign."

In the same case this court, referring to a grant to a corporation of the prerogative privilege of banking, say:

"A state, in granting privileges to a bank with a view of "affording a sound currency, or of advancing any policy con- "nected with the public interest, exercises its sovereignty, and "for a public purpose of which it is the exclusive judge. * * * "This act, so far from parting with any portion of the sover- "eignty, is an exercise of it."

In the exercise of this sovereign power to contract, the various legislatures have granted to individuals and corporations such public franchises as the right to establish and maintain public ferries, bridges and highways, including canals and railways as improved highways, and to create banks of issue, endowing them with such prerogative franchises as the right to levy and collect tolls and to issue currency.

They have granted to them total and perpetual exemption from the sovereign power of taxation. They have contracted that no future legislature should grant similar privileges in the particular locality.

And such grants have been sustained and enforced as a legitimate exercise of this soverign power, and binding on the states as contracts protected by the federal constitution.

In every corporate charter, in addition to the privilege of corporate existence, there are certain special privileges, emanating from the state, called franchises. These franchises conconstitute property, and are as fully protected by the obligation of the contract of the charter as a grant of land, or other tangible property, by the state.

This power to contract by corporate grants is, in its very nature, such that the occasions and the considerations which shall call for its exercise and the extent of the grant, must be left to the legislative discretion. The protection of the people from its abuse, beyond the constitutional limitations which they

may throw around it from time to time, must be found in the judgment and good faith of the legislature itself.

Said C. J. MARSHALL, (12 Wheat., 439): "Questions of "power do not depend upon the degree to which it may be "exercised. If it may be exercised at all, it must be exercised "at the will of those in whose hands it is placed."

"The granting of franchises," says PIERCE, "particularly "those which relate to the means of internal communication, "is an ordinary function of legislative power, and whether "they shall be of greater or less extent, exclusive or not, is a "matter of legislative discretion." (Pierce on Railroads, p. 453.)

In the leading case of *Boston & Lowell R. R. Corporation* v. *Salem & Lowell R. R. Co.*, 2 Gray, 32, the source and extent of the power to make this, and similar grants and contracts, is clearly stated. The court, SHAW, C. J., said:

"In addition to the law making power, the legislature is the "representative of the whole people, with authority to control "and regulate public property and public rights, to grant lands "and franchises, to stipulate for, purchase and obtain all such "property, privileges, easements and improvements as may be "necessary or useful to the public, to bind the community by "their contracts therefor, and generally to regulate all public "rights and interests.

"It is under this authority that lands are granted, either in "fee or upon any other tenure, that the uses of navigable "streams and waters are regulated; the right to build over "navigable waters, to erect bridges, turnpikes and railroads, "and other similar rights and privileges, are granted and jus- "tified.

"Of the necessity and convenience of all roads and other "public works and improvements, of their fitness, and the

"best mode of providing them, the established government of "the state, acting by the legislature for the time being, must "necessarily judge and determine. They must decide whether "it is best to provide for them by funds from the public treasury, "or to procure individuals to advance their own funds for the "purpose, to be reimbursed by tolls. * * * Were all "such grants and stipulations repealable by subsequent legis- "latures, because they are in the form of laws, then the un- "limited power of the legislature to alter and change laws,— "sometimes called, rather extravagantly, the omnipotence of par- "liament,—would be a source of weakness and not of strength. "* * * When such a contract has been made by the leg- "islature, upon considerations of an equivalent public benefit, "and where the grantees have advanced their money to the "public upon the faith of it, the state is bound by the plain "principles of justice, faithfully to respect all grants and rights "thus created and vested by contract."

The right to levy and collect tolls has long been recognized by the legislatures and the courts as a franchise, which is a proper and legitimate subject of legislative grant.

We find such grants in the statutes of all the states, and the reports are full of decisions defining and sustaining these grants as legitimate exercises of legislative powers.

In *Perrine* v. *C. & D. Canal Co.*, 9 How., 172, the charter of a canal company contained an express power to collect tolls, subject to certain limitations, and the question of the power to collect tolls in particular cases was involved. The court recognized the validity of the grant, and conceded that the extent of the power conferred depended solely on the language and construction of the grant. This court, C. J. TANEY, said:

"Whether they (*i. e.* passengers) are made liable to toll or not, "must, of course, be determined *by the language of the charters.*

"* * * A corporation has no rights of property except "those derived from the provisions of the charter, nor can it "exercise any powers over the property it holds, except those "with which the charter has clothed it. * * * And "whether they may lawfully demand compensation from the "persons whom it permits to pass over its property *must de-* "*pend upon the language of the charter, and not upon the* "*rules of the common law.*"

This court, in *Railroad Company* v. *Maryland*, 21 Wall., at page 471, by Mr. Justice BRADLEY, said:

"So when, by the improvements and discoveries of mechan- "ical science, railroads came to be built and furnished with all "the apparatus of rapid and all-absorbing transportation, no one "imagined that the state, if itself the owner of the work, "*might not exact any amount whatever of toll or fare or freight,* "*or authorize its citizens or corporations, if owners, to do the-* "*same.*"

* * * * * * * *

"This unlimited right of the state to charge, or to *authorize* "*others* to charge toll, freight or fare, for transportation on its "roads, canals and railroads, arises from the simple fact that "they are its own works, or constructed under its authority. "It gives them being. It has a right to exact compensation "for their use. It has a discretion as to the amount of that "compensation. That discretion is a *legislative*,—a *sovereign-* "*discretion*, and *in its very nature is unrestricted and uncon-* "*trolled.*"

In *Bridge Proprietors* v. *Hoboken Co.*, 1 Wallace, 116, a charter granted authority to build bridges, with power to collect certain tolls, and made the privilege exclusive for a term of ninety-nine years. This court, in holding this charter a contract, Mr. Justice MILLER delivering the opinion, said:

"The parties who built the bridges had the positive enact-
"ment of the legislature in the very statute which authorized
"the contract with them, that no other bridge should be built.
"*They had a grant of tolls on their bridges for ninety-nine*
"*years, and the prohibition against the erection of other bridges*
"*was the necessary and only means of securing to them the*
"*monopoly of those tolls.* * * * On the faith of this
"enactment they invested the money necessary to erect the
"bridges. *These acts and promises on the one side and the*
"*other, are wanting in no element necessary to constitute a con-*
"*tract.* Such legislative provisions of the states have so often
"been held to be contracts that a reference to authorities is
"superfluous."

In *Newburg Turnpike Co.* v. *Miller*, 5 Johnson's Ch., 112, Chancellor KENT, referring to a grant of the right to take tolls by a turnpike company, said:

"The consideration by which individuals are invited to ex-
"pend money upon great, expensive and hazardous public
"works, as roads and bridges, and to become bound to keep
"them in constant and good repair, *is the grant of a right to*
"*an exclusive toll. This right, thus purchased for a valuable*
"*consideration, cannot be taken away by direct or indirect means,*
"*devised for the purpose*, both of which are equally unlawful."

Similar language was used by Chancellor Walworth in the case of *Beekman* v. *S. & S. R. R. Co.*, 3 Paige, 45, in which he said the legislature may regulate the use of the franchise, and limit the amount of tolls, "*unless they have deprived them-*
"*selves of that power by a legislative contract with the owners*
"*of the road.*"

The power to grant to corporations the absolute right to fix their own rates of toll, is expressly recognized by this court in the so-called Granger cases.

In *Chicago, &c., R. R. Co.* v. *Iowa*, 94 U. S., 161, this court said: Common carriers "are subject to legislative control as to "their rates of fare and freight, *unless protected by their* "*charters*."

So in *Peik* v. *Chicago, &c., R. R. Co.*, 94 U. S., 176, this court said: "The state may limit the amount of charges by "railroad companies for fares and freights, *unless restrained by* "*some contract in the charter*."

Again, in *Winona & St. Peter R. R. Co.* v. *Blake*, 94 U. S., 180, this court said: "*There is nothing in the charter* limit- "ing the power of the state to regulate the rates of charge."

The power of the state being granted to make contracts of the nature under discussion, more appropriate and express language could not well be used to confer upon the company exclusive control over its own rates than this: "The board of "directors shall have power to establish such rates of toll for "the conveyance of persons and property upon the same as "they shall from time to time, by their by-laws, determine, and "to levy and collect the same for the use of said company."

What is it suggested could have been added to make clearer the intention?

In the multitude of corporate charters which have been brought before this court, only one limitation on the power of the legislature to grant special franchises by charter has been recognized, viz: that it is beyond the power of the legislature to grant to an individual or corporation a franchise to injure the public health or corrupt the public morals.

This limitation is sustained, and the principles on which it rests are clearly stated in the case of *Fertilizing Company* v. *Village of Hyde Park*, 97 U. S., 659, in which a corporation claimed exemption from legislative prosecution for an admitted

nuisance injurious to public health, and in the case of *Stone* v. *Mississippi*, 101 U. S., 814, in which a similar exemption was claimed for a chartered lottery, admittedly injurious to public morals.

The doctrine of these cases is not that there is strictly any limitation imposed on the sovereign power of the legislature, but that such assumed grants are beyond the power even of sovereignty, and therefore are contrary to one of the fundamental purposes of government, and that even the people themselves would not possess the power to make them.

In *Stone* v. *Mississippi*, *supra*, this court said:

"No legislature can bargain away the public health or the "public morals; the people themselves cannot do it, much less "their servants."

How different such cases resting on the first duty of all governments to protect the health and morality of its citizens from the case at bar, in which the only question is as to the extent of a franchise admitted to be a legitimate subject of legislative grant, and which affects not the health or morals of a community, but solely the price to be paid by those who voluntarily use the road which the corporation has built on the faith of the express grant of the franchise to levy and collect such tolls as its directors might determine.

But it may be argued from the cases cited that they establish the principle that it is beyond the power of the legislature to limit the future exercise of the police power, and that the power to regulate the rates of freight of common carriers falls within that power.

We deny that the power to regulate the rates of freight of common carriers as sustained by the courts, emanates from the police power.

It is conceded by all the authorities that the police power is

only one branch of the legislative power, and that there are limits beyond which the rights of the citizen are free from its operation.

The police power is thus defined by Bentham: "Police "power is, in general, a system of protection for the preven- "tion of crime or calamity."

In the cases cited, this court do not extend the police power beyond the protection of the public health and public morals. This court said:

"No one will deny, however, that it (the police power) ex- "tends to all matters affecting the public health and public "morals," and that, as a consequence, all persons, natural or artificial, "are subject to such rules and regulations as may "from time to time be ordained and established for the preser- "vation of health and morality." (*Stone* v. *Mississippi*, 101 U. S.)

The broadest definition given by this court to the police power, is found in *Beer Co.* v. *Mass.*, 97 U. S., 25, where it was said: "It extends to the protection of the lives, health "and property of the citizens, and to the preservation of good "order and the public morals."

The police power, as applied to the use of private property, is a power to regulate its use by the owner, so as not to injure others in the enjoyment of their own. And therefore, in the exercise of that power, the legislature may prohibit the owner from devoting his property to a use which would injuriously affect the health, morals or good order of the community, but this power has nothing to do with the compensation which others shall pay the owner for an authorized use of his property, or which individuals or corporations shall charge and receive for a service which affects injuriously neither the health nor good morals of a community.

Police power has been declared to be "for the better protec-
"tion and enjoyment of that absolute dominion which the in-
"dividual claims." (*Vanderbilt* v. *Adams*, 7 Cowen, 351.)

In the the case under discussion, this power is asserted by the State of Illinois, not in general regulations for the welfare of the whole, but in direct impairment of the most valuable property rights.

When we trace the power of the legislature to regulate fares and rates of toll, as defined by the decisions of this court, to its origin, we find that it has no relation to the police power, but is derived from a wholly different source.

The decisions which follow *Munn* v. *People*, 94 U. S., 113, only adopt the doctrine of that case and apply it to common carriers.

In the opinion in that case, this court, in the outset, carefully define the principle on which the doctrine of the case is founded for the express purpose, as the court say, of defining "what is within and what without its operative effect."

That principle is thus stated:

"When, therefore, one devotes his property to a use in which
"the public has an interest, *he in effect grants to the public an in-*
"*terest in that use*, and must submit to be controlled by the public
"for the common good, *to the extent of the interest he has thus*
"*created*. He may withdraw his grant by discontinuing the
"use, but so long as he maintains the use, he must submit to
"the control."

The principle is stated in similar language in the authorities cited in the opinion.

In the quotation from Lord Hale it is said:

"If a private wharf is made a public wharf, the wharf and

"crane and other conveniences *are affected with a public in-*
"*terest*, and they cease to be *juris privati* only."

In the quotation from *Aldnutt* v. *Inglis*, 12 East., 527, Lord ELLENBOROUGH said:

If a company "take the benefit of a monopoly conferred by "an act of parliament, it must, *as an equivalent*, perform the "duty attached to it on reasonable terms." And in the same case, LE BLANC, J., said that the peculiar use to which the property in that case had been voluntarily put under the act of parliament was in the nature of a "dedication," and that the principle of Lord Hale "attached to the property," and therefore, it was "affected with a public interest."

The theory of the Munn case is, that the courts give to the voluntary act of the party its intended legal effect, and sustain and establish the right of the public to use the property thus dedicated for a reasonable rate, and to enforce its right by appropriate legislation as derived, not from the sovereign police power, but from the voluntary act of the owner of the property. But in the cases of *Chicago, &c. R. R. Co.* v. *Iowa*, 94 U. S., 161, and *Peik* v. *Chicago, &c. R. R. Co.*, 94 U. S., 176, this court held that where the contract of the State excluded this implied dedication, the doctrine of the Munn case had no application.

It thus clearly appears from the decisions of this court:

First. That the power to levy and collect tolls is a grantable power, and may, in the discretion of the legislature in which it is vested, be conferred upon a person or corporation.

Second. That the police power of the state does not relate to the adjustment or regulation of commercial affairs, but solely to the preservation of the public health, morality and good order.

Third. That the power to regulate rates of charges of railroads and kindred business enterprises, by the state, arises out of a voluntary dedication of the property by its owners to a public use, and does not in any degree flow from the police power.

We invite attention to the cases cited by the Supreme court of Illinois. That court refer to the case of the *C., B. & Q. R. R. Co.* v. *Iowa*, 94 U. S., 155, and remark that that "case "cannot be distinguished in its principles from the one under "consideration."

That case arose in the State of Iowa. At the time the company took its charter, the constitution of that state provided that all acts for the creation of corporations within the state might be altered or repealed by the legislature at any time after their passage. This court held that this reservation was written into the various charters.

Mr. Chief Justice WAITE said:

"This railroad company was organized under the general "corporation law of Iowa, with power to contract in reference "to its business, the same as private individuals, and to estab- "lish by-laws and make all rules and regulations deemed ex- "pedient in relation to its affairs, but being subject, nevertheless, "at all times to such rules and regulations as the general as- "sembly of Iowa might, from time to time, enact and provide. "This is, in substance, its charter, and to that extent it is pro- "tected as by a contract; for it is now too late to contend that "the charter of a corporation is not a contract within the "meaning of that clause in the constitution of the United "States which prohibits a state from passing any law impair- "ing the obligation of a contract. Whatever is granted is se- "cured, subject only to the limitations and reservations in the "charter, or in the laws or constitutions which govern it."

There is nothing here said about the rights of natural persons or implications of reasonableness, or the right to regulate under the police power, but the decision is put upon the express ground that the reservations in the constitution of Iowa, which became a part of the charter, reserved the right to the state to regulate the rates. We come with a case where there are no reservations or limitations, and thus bring ourselves within the decision of this court that "whatever is granted is "secured, subject only to the limitations and reservations in the "charter or in the laws or constitutions which govern it."

And yet the Supreme court of Illinois inform us that the Iowa case cannot be distinguished in its principles and material facts from the case under discussion.

By all the force of reasoning of this court in the Iowa case, we are confirmed in the rights now claimed, because the special ground upon which the right to regulate its own tolls was, in that case, denied to the railway company, is found wanting in the present case; at the same time the general principle we contend for, is admitted.

The Supreme court of Illinois refer to the case of *Shields* v. *Ohio*, 95 U. S., 319, which, they say, is "a case in its facts very similar to this."

In that case the Junction Railroad Company was incorporated in 1846, with the right to fix such rates as it should deem reasonable. In 1853 it surrendered its charter and consolidated under the general law, subject to the constitutional provision then existing in Ohio, that "no special privileges shall ever be "granted that may not be altered, revoked or repealed by the "general assembly." This court held that this constitutional provision "entered into the acts under which the consolidations "were made and rendered the corporations created, and the

"franchises conferred, subject to repeal and alteration just as "though they had been expressly declared to be so by the act."

After marking out this distinction, and basing their opinion upon it, this court further said: "Beyond the sphere of the re- "served powers, the vested rights of property of corporations "in such cases are surrounded by the same sanctions, and are "as inviolable as in other cases."

The right to regulate its own rates was refused to the company in that case upon a ground that has no existence whatever in the case under discussion, and it was unnecessary labor for this court in the Shield's case, or in the Iowa rate case, to have spent its time in showing that the charters were taken subject to a special reservation in behalf of the state over the subject of rates, if it be true, as the Supreme court of Illinois say, that all charters are subject to the police power of the state and its right under that power to determine the reasonableness of the rates established. This was a reason of general application that would, in itself, have furnished an uniform answer to the claims of railway companies, and would have made the question of the reserved power in the constitution of the state in the Iowa case, and the acceptance by the act of consolidation of the jurisdiction of the state in the Shield's case, of minor importance and exceptional application in comparison with a principle applying to all charters of whatsoever description, and granted by whatsoever state.

This class of cases have mainly turned in this court upon reservations, either in the laws or constitutions of the states, but upon the theory advanced by the Illinois court, such reservations are altogether unimportant and need not have been made.

The Illinois court refer to the case of *Munn* v. *People*, 94 U. S., 113, as an authority for their conclusion. As already shown, that decision can have no application to this charter. Re-

ferring to railroad companies this court, in the case already quoted of *C., B. & Q. R. R. Co.* v. *Iowa* (94 U. S., 161), said: "They are, therefore, engaged in a public employment affecting "the public interest, and under the decision in *Munn* v. *Illinois*, "subject to legislative control as to their rates of fare and freight, "*unless protected by their charters.*"

The Supreme court of Illinois seem to regard the principle of the Munn case as paramount to contracts of the state. This court have expressly said that the Munn case has no application against the contract of a state.

As late as in the 101 U. S., 816, in *Stone* v. *Mississippi*, this court said: "The doctrines of *Trustees of Dartmouth College* v. "*Woodward*, announced by this court more than sixty years "ago, have become so imbedded in the jurisprudence of the "United States as to make them to all intents and purposes a "part of the constitution itself."

Doctrines worthy of such high eulogium ought to have a practical application, and should reach all varieties of method pursued by a state in violation of its own contracts. The doctrines of the Dartmouth College case, and the splendid line of cases following it, which have become so imbedded in the jurisprudence of the United States, are not limited to the assertion of the principle of the inviolability of state contracts, but extend to a condemnation of the various devices and pretenses which have been invoked for the purpose of reaching this forbidden end. The theory put forward by the Supreme court of Illinois, that the inalienable power at all times resident in the State to protect the public morals and public health and peace of society, authorizes the abrogation of contracts made by the commonwealth, is not a new argument; it has been met in the leading cases upon the subject, in which this court have instructed the various states that neither the

public health, the public morals nor the public interests of a state can possibly be advanced by a violation of the public faith of the state.

The Supreme court of Illinois have thought proper to conclude their citation of authorities with the following remarks: "The general assembly surely could not have intended in "granting such charters to clothe these bodies with unlimited "and uncontrolled power. Had it been so expressed in the "bills for these charters, it cannot be supposed they would "ever have been enacted into laws. That department of gov-"ernment could not have intended to grant power to oppress "and wrong the community without limit or control."

To some minds the spectacle of a granger legislature taking absolute control of foreign capital invested upon the faith of supposed pledges in transporting their persons and produce, appeals quite as deeply to the moral sensibilities as the case put by the Supreme court of Illinois. The rapacity of the owners in one case may be controlled by competition. in the other there is absolutely no check to be interposed between the few who own, and the many who use.

To argue from the supposed advantages secured by a party to a contract, is a dangerous and unauthorized rule of construction, and believing this contract to be so oppressive, it would be natural for benevolent minds to seek a deliverance from its terms, for the oppressed party. There is danger, however, that, moved by such considerations, the intellect may meet with difficulties in coldly applying the rules of law, and it is to be regretted that the Illinois court approached the decision of a purely legal question with such a pronounced and at the same time erroneous opinion as to the result involved.

That court is evidently of the opinion that the right claimed by the railroad company, as conferred by the legislature of Illinois, gives the company the control of the transportation

market wherever its road may run, whereas, in fact, the amount of tolls a railroad can ever command for transporting freight and passengers, is governed by a law quite beyond the desires of the directors of the company.

The right of a railroad company to adjust, by the aid of skillful and experienced minds, freight and passenger tariffs, and to almost daily adapt them to the various and changing necessities of hundreds of different localities, is indeed a valuable one; and for that we struggle.

The legislature of Illinois, without regard to competition or to any of the complicated considerations entering into the adjustment of freight and passenger tariffs on a long line of railway, have enforced by the severest penalties the observance of a rigid tariff which does not allow companies to meet the changes made necessary by the competitive and ever varying relations of supply and demand, but have laid down an arbitrary and iron rule for the conduct of a business which, to be advantageously done both for the public and the companies, requires the greatest flexibility of management.

The Illinois court stigmatize the contract made by their legislature as oppressive. But that court could hardly have been unmindful of the fact that all railroads in Illinois are today charging not over thirty per cent. of the rates in existence twenty years ago, and that this decline has occurred during a period when the right of the companies to establish their own rates has been recognized,—and that it has not taken place in obedience to any act of the legislature, but has been brought about in a gradual and healthy manner by the law of supply and demand, which governs railroad rates as certainly as it does the price of produce and commodities grown and manufactured along their lines. Untrammeled competition will ultimately cure all the evils complained of in relation to railroads.

This court, in the case of *Railroad Company* v. *Maryland*, 21 Wall., 473, made a comprehensive answer to suggestions of this character, the truth of which is confirmed by the experience of every day. It said:

"Of course, the question will be asked, and pertinently asked, "Has the public no remedy against exorbitant fares and freights "exacted by state lines of transportation? We cannot entirely "shut our eyes to the argument *ab inconvenienti*. But it may "also be asked: Has the public any remedy against exorbitant "fares and freights exacted by steamship lines at sea? Mari- "time transportation is almost as exclusively monopolized by "them as land transportation is by the railroads. In their case, "the only relief found is in the existence or fear of competition. "The same kind of relief should avail in reference to land trans- "portation."

What agency so just and natural as this, is it expected the law making power can invoke?

The facts upon which the argument in support of legislative interference is based, are false. The railroads do not and cannot enforce hardships, the alleged possibility of which is made the excuse of taking the control of their business.

Reasonable rates! These are high sounding words. Who so unreasonable as to oppose reasonable rates?

The next step of defining a reasonable rate has not yet been attempted by the thousands who seem to think they have solved the transportation problem in declaring that carriers must conform to reasonable rates.

General expressions are very misleading in matters made up of an infinity of details.

In looking over the vast field of American trade and commerce, it is probably true that to-day all varieties of commodities are sold at reasonable rates. And when called upon to ex-

plain how we know that, are we not driven at once to reply, simply because they can be bought at those rates.

A reasonable rate is a rate that you can give a good busines reason for.

If, for example, the flow of business is, for the time being, in one direction over your road, so that you find you are returning a large supply of empty cars to meet it, you ought to load those empty cars at reduced rates rather than to loose their use. This prevents waste and is a reasonable course to pursue, and is for the advantage both of the railroad company and the public, but before the legislature can be convened, or a new schedule be agreed upon and published by the railroad commissioners, the occasion has passed.

The gradual but constant decline of railroad rates shows that the owners well understand that an increased volume of business at decreased rates is an inevitable, as well as a wise policy. A railroad once built cannot be removed; it must take its fate with the people along its line, and has therefore the greatest inducements to build up the trade and productions of the country through which it runs.

The fact that without legislative interference this great decline in rates has taken place, ought to suggest to a thinking mind the existence of some law governing this question, quite above regulations passed by boards of directors.

The sagacity and interest of millions of people are hourly and daily exercised in meeting the ever-shifting conditions of the market. He is a bold and impatient adventurer, who proposes to substitute for these agencies the ordinary law-making power.

Some men invest their money in trade, some in manufacturing, and some in transportation enterprises. The prices in all these branches are settled by the ever-varying considerations

of policy, interest and competition, which no man can enumerate, and which constitute the freedom and activity of society.

These principles ought not to be obstructed on any pretense. The great trunk lines from the west to the seaboard have recently been engaged in a severe competition, which, we are told, the interests of the community require should be terminated by some superior power. I deny it. This competition arose out of the single fact that there was not as much business as all the lines could do. The same results must and ought to follow, that attend all investments which, at times, exceed the requirements of business.

Untimely investments in railroads, suggested, not by the necessities of business, but springing from the personal interest or mistaken judgment of the promoters, have no claim upon the commerce of the country for protection. Sound investments, made to meet an existing demand, need no such protection.

No board, sitting to establish rates, would have ever thought of issuing a schedule so low as that which prevailed in 1881 upon the trunk lines to the seaboard. Yet the people were entitled to those rates, because they were the result of that freedom of investment and competition which largely makes up the difference between a free people and one where the affairs of the citizen are subject to active interference by a superior power.

The grangers at one end of the line, and advisory commissions at the other, the one trying to get the rates up, and the other to put them down, are alike illustrations of hopeless efforts to arrange and settle for fifty millions of people those affairs, which, involving thousands of local and varying complications, they must inevitably settle for themselves.

Nor is it incumbent upon me to make it clear that this

method will prevent all possible cases of hardship; for such are constantly occurring in all branches of business as the result of incautious investment and powerful competition. But it is enough for me to affirm that, having been found to be a correct principle in relation to almost every variety of business as conducted in this country, the large presumption is, that it will prove in the long run more practicable than any other that can be devised.

We may content ourselves with two or three references to the decisions of this court on the point, that grants of the kind under discussion are contracts within the constitutional provision prohibiting states from passing any law impairing the obligation thereof.

In the *Binghampton Bridge Company*, 3 Wall., 71, this court said:

"The legislature therefore says to public spirited citizens: "'If you will embark with your money, time and skill in an en- "terprise which will accommodate the public necessities, we "will grant to you, for a limited period, or in perpetuity, privil- "eges that will justify the expenditure of your money and the "employment of your time and skill.' Such a grant is a contract "with mutual considerations; and justice and good policy alike "require that the protection of the law should be assured to it.

* * * * * *

"We have supposed if anything was settled by an unbroken "course of decisions in the federal and state courts, it was, "that an act of incorporation was a contract between the state "and stockholders. All courts at this day are estopped from "questioning the doctrine. The security of property rests "upon it, and every successful enterprise is undertaken in the "unshaken belief that it will never be forsaken.

"A departure from it now would involve dangers to society

"that cannot be foreseen; would shock the sense of justice of "the country, unhinge its business interests, and weaken, if not "destroy, that respect which has always been felt for the judicial "department of the government."

In the case of *Holyoke Co.* v. *Lyman*, 15 Wall., 511, this court, referring to railroad charters, said:

"Such a charter, when accepted by the corporators, is un- "doubtedly a contract that the powers, privileges and fran- "chises granted, shall not be restrained, controlled or de- "stroyed without their consent, unless a power for that purpose "is reserved to the legislature in the act of incorporation, or "in some prior general law in operation at the time the act of "incorporation was passed."

In the case of *Miller* v. *State*, 15 Wall., 488, Mr. Justice CLIFFORD, in delivering the opinion of the court, said:

"Corporate franchises, granted to private corporations, if "duly accepted by the corporators, partake of the nature of "legal estates, and the grant, under such circumstances, if it "be absolute in its terms, and without any condition or reser- "vation importing a different intent, becomes a contract within "the protection of that clause of the constitution, which ordains "that no state shall pass any law impairing the obligation of "contracts. Charters of private corporations are regarded as "executed contracts between the state and the corporators, "and the rule is well settled that the legislature, if the charter "does not contain any reservation or other provision modifying "or limiting the nature of the contract, cannot repeal, impair or "alter such a charter against the consent, or without the default "of the corporation judicially ascertained and declared. Sub- "sequent legislation, altering or modifying such a charter, "where there is no such reservation, is plainly unauthorized, "if it is prejudicial to the rights of the corporators, and was "passed without their assent."

Mr. Justice STORY, in the Dartmouth College case, (p. 682,) referring to the definition of a contract, said:

"It determines in the most unequivocal manner, that the "grant of a state is a contract within the clause of the con- "stitution now in question, and that it implies a contract not to "re-assume the rights granted."

This is precisely what the State of Illinois have done in this case: they have re-assumed the rights granted to the corporators. That right was to determine their own rates of toll upon property and passengers. For twenty years they enjoyed it, and now, by an express law, the legislature asserts and exercises it; in other words, re-assumes it.

It is at once perceived that by this action the contract is impaired. It is rendered less valuable to the owners of the property.

The obligation of this contract on the part of the state is the right conferred by the state upon the company to determine for itself the rates of toll upon its road.

Mr. Justice STORY, in the same case, (p. 712,) said:

"In my judgment, it is perfectly clear that any act of a leg- "islature which takes away any powers or franchises vested "by its charter in a private corporation, or its corporate offi- "cers, or which restrains or controls the legitimate exercise of "them, or transfers them to other persons, without its assent, "is a violation of the obligations of that charter."

The law of 1871 changes the rates established by the directors of the company, and thereby impairs the obligation of the contract. The right to fix rates of freights is something beneficial to the owners of the property.

This court, 4 Wheaton, 628, said:

"To correct this mischief, by restraining the power which "produced it, the state legislatures were forbidden 'to pass any "law impairing the obligation of contracts'; that is, of contracts "respecting property under which some individual could claim "a right to something beneficial to himself."

In *Planters' Bank* v. *Sharp*, 6 Howard, 327, this court said:

"One of the tests that a contract has been impaired is, that "its value has, by legislation, been diminished. It is not, by "the constitution, to be impaired at all."

The common sense of all mankind renders it unnecessary for me to further argue the proposition that the value of a railroad charter which confers upon the corporators the right to fix their own rates of toll, is impaired by an act of the legislature fixing less rates than those established by the Board of Directors of the Company.

WIRT DEXTER,
Counsel for Plaintiff in Error.

108-526

OFFICE SUPREME COURT U.S.
FILED
FEB 19 1883
JAMES H. McKENNEY, Clerk

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES, ~~Appellant~~ Plaintiff in Error,
v.
THE PEOPLE OF THE STATE OF ILLINOIS, ~~Appellee~~ Defendant in Error.

~~Appeal from~~ Error to the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief of Plaintiff in Error.

SIDNEY BARTLETT,
WIRT DEXTER,
Counsel for ~~Appellant~~ Plaintiff in Error.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

IN THE

SUPREME COURT OF THE UI

OCTOBER TERM, A. D.

NEAL RUGGLES, Plaintiff in Error

v.

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error

Appendix to Appellant

AN ACT to provide for a general system of rai
proved November 5, 184

SECTION 1. *Be it enacted by the peop*
nois, represented in the General Assembly,
persons, not less than twenty-five, being s
of any contemplated railroad, may be fo
tion for the purpose of constructing, ow
such railroad, by complying with the fol
When stock to the amount of at least on
every mile of said road so intended to be
faith subscribed, and ten per cent. pai
required, then the said subscribers may e
said company; thereupon they shall sever

of ance
por sed
sha the
the and
roa uch
pov
run aid,
ten the
con or-
the pa-
cer eal,
of ble
elec tate
be tion
inter gs,
nan
the ion,
sub fter
of s tion
arti fter
be hich
per ital
tim xist,
bod han
§ dis-
offi sub-
of t uch
goo to
cles for.
affi hall
arti nis-
has and
act ors;

IN THE

SUPREME COURT OF THE UI

OCTOBER TERM, A. D.

NEAL RUGGLES, Plaintiff in Error

v.

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error

Appendix to

AN ACT to provide for a general system of rai
proved November 5, 184

SECTION 1. *Be it enacted by the peop*
nois, represented in the General Assembly,
persons, not less than twenty-five, being s
of any contemplated railroad, may be fo
tion for the purpose of constructing, ow
such railroad, by complying with the fol
When stock to the amount of at least one
every mile of said road so intended to be
faith subscribed, and ten per cent. pai
required, then the said subscribers may e
said company; thereupon they shall seve

of ance
por sed
sha the
the and
roa uch
pov
run aid,
ten the
com or-
the pa-
cer eal,
of table
elec tate
be tion
inte gs,
nan
the ion,
sub fter
of s tion
arti fter
be hich
per ital
tim xist,
bod han
§ dis-
offi sub-
of tuch
good to
cles for.
affic hall
arti nis-
has and
actu ors;

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES, Plaintiff in Error ~~Appellant~~

v.

THE PEOPLE OF THE STATE OF ILLINOIS, ~~Appellee~~ Defendant in Error.

Error to ~~Appeal from~~ the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief. of Plaintiff in Error

AN ACT to provide for a general system of railroad incorporations. Approved November 5, 1849.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than twenty-five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least one thousand dollars for every mile of said road so intended to be built, shall be in good faith subscribed, and ten per cent. paid thereon as herein required, then the said subscribers may elect directors for the said company; thereupon they shall severally subscribe articles

of association, in which shall be set forth the name of the corporation; the number of years the same is to continue, which shall not exceed fifty years; the amount of the capital stock of the company, which shall be the actual cost of constructing the road, together with the cost for the right of way, motive power, and every other appurtenance for the completion and running of said road, as nearly as can be estimated by competent engineers; the number of shares of which said stock shall consist; the number of shares of which said stock shall consist; the number of directors, and their names, to manage the concerns of the company, who shall not be one-half in the number of the stockholders, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each county into or through which it is intended to pass, and its length, as near as may be, and the names of five commissioners to open books of subscription to the stock. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company. The said articles of association may, on complying with the next section, be filed in the office of secretary of state, and thereupon the persons who have subscribed, and all persons who shall, from time to time, become stockholders in such company, shall be a body corporate, by the name specified in such articles.

§ 2. Such articles of association shall not be filed in the office of the secretary of state until ten per cent. on the amount of the stock subscribed thereto shall have been actually and in good faith paid, in cash, to the directors named in such articles, nor until there is endorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in such articles, that the amount of stock required by the first section has been subscribed, and that ten per cent. on the amount has actually been paid in.

§ 3. A copy of any articles of association filed in pursuance of this act, with a copy of the affidavit aforesaid endorsed thereon, or annexed thereto, and certified to be a copy by the secretary of this state, or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts therein stated.

§ 4. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding and conveying any real estate and personal property whatever, necessary for the construction of such road, and for the erection of all necessary buildings, yards and appurtenances for the use of the same.

§ 5. The commissioners for opening books of subscription, named in the act of incorporation, shall, from time to time, after the company shall be incorporated, open books of subscription to the capital stock of the company, in such places, and after giving such notice as a majority of them shall direct; which books of subscription shall be kept open until all the capital stock shall be subscribed, if the corporation shall so long exist, and in case a greater amount of stock shall be subscribed than the whole capital of said company, the commissioners shall distribute such capital stock as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any subscriber than such subscriber shall have subscribed for.

§ 6. As soon as practicable, after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners to receive subscriptions thereto shall appoint a time and place for the meeting of the stockholders to choose directors;

such meeting to be held in one of the counties in or through which such railroad is proposed to be constructed, and notice thereof shall be given by said commissioners, by public notice to be published not less than twenty days previous thereto, in the state paper, and a newspaper published in each county through which the said road shall be intended to run, in which a newspaper shall be published. Thirteen directors shall be chosen at such meeting, by ballot, and by a majority of the votes of the stockholders being present in person or by proxy, and every such stockholder being so present at such election, or at any subsequent election of directors, shall be entitled to give one vote for every share of stock which he shall have owned for the thirty days next preceding such election; but no stockholder shall vote at any such election upon any stock except such as he shall have owned for such thirty days. No person shall be a director unless he shall be a stockholder, owning stock absolutely and in his own right, and qualified to vote for directors at the election at which he shall be chosen; and at least seven of the directors shall, at the time of their election, be residents of the counties in or through which the route of such railroad shall run. The directors shall be directors for one year, and until others are elected in their places.

§ 7. The commissioners named in the last preceding section shall be inspectors of the first election of directors, shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them, or a majority of them, in the office of the secretary of state, and in the office of the clerk of each county, or with the cleak of the county commissioners' court (as the case may be) of each county in or through which such railroad shall be proposed to be constructed, and shall also deliver to the treasurer of such company, all money [received] by such commissioners on subscriptions to such capital stock, and all books and papers

in their possession relative to such subscriptions. All subsequent elections shall be held at such time and place in one of these counties through which such railroad shall pass, as shall be directed by the by-laws of the company.

§ 8. A general meeting of the stockholders of any corporation formed under this act shall be holden annually, at the time and place appointed for the election of directors, and a meeting may be called at any time during the interval between such annual meetings, by the directors or by the stockholders owning not less than one-fourth of the stock, by giving thirty days' public notice of the time and place of the meeting, in the state paper, and a newspaper published in each county through which the said road shall be run or be intended to run, in which a newspaper shall be published; and when any such meeting is called by the stockholders, the particular object of such call shall be stated, and if at any such meeting thus called, a majority in value of the stockholders are not represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business, and if, within said three days, stockholders having a majority of the stock do not attend such meeting, then the said meeting shall be dissolved.

§ 9. At the regular annual meeting of the stockholders of any corporation, it shall be the duty of the president and directors in office for the preceding year to exhibit a clear and distinct statement of the affairs of the said company, and at any meeting of the stockholders a majority of those present in person or by proxy may require similar statements from the directors, whnse duty it shall be to furnish them when thus required; and at all general meetings of the stockholders a majority in value of the stockholders in said company may fix the rate of interest which shall be paid by the company for loans for the construction of said road and its appendages;

may remove any president or any directors of said company, and elect others in their stead: *Provided*, notice of such intended removal has been given as required by the last preceding section.

§ 10. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the company, when it ought to have been made, the company for that reason shall not be dissolved, if within ninety days thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws of the company. There shall be a president of the company, who shall be chosen by and from the directors, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office, as the company by its by-laws may require.

§ 11. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such payments or instalments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after personal demand, or notice requiring such payment shall have been made in each county through which said road shall be laid out in which a newspaper shall be published.

§ 12. The directors of such company shall have power to make by-laws for the management and disposition of stock, property and business affairs of such company, not inconsistent with the laws of this state, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers for carrying on all the business within the object and purposes of such company.

§ 13. The stock of such company shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable till all previous calls thereon shall have been fully paid in, or the said shares shall have been forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in their own or in any other corporation.

§ 14. All the stockholders of any such company that shall be hereafter incorporated under this act shall be severally, individually liable to the creditors of such company to an amount equal to the amount of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by the company in manner aforesaid shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following section; and shall be jointly and severally liable for all debts due and owing to all their laborers, servants and apprentices, for services performed for such corporation, but not liable to an action therefor before an execution shall be returned unsatisfied in whole or in part against the corporation, and then the amount due on said execution shall be the amount recoverable, with costs, against said stockholders.

§ 15. The president and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of the capital stock so fixed and paid in; which certificate shall be signed by the president and a majority of the directors, and sworn to by the president and secretary, and they shall, within the said thirty days, file and record the same in the office of the secretary of state.

§ 16. If the directors of any such company shall declare and pay any dividend, when the company is insolvent, or any

dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted, so long as they shall respectively remain in office. *Provided*, that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall, within thirty days thereafter, or after his return, if absent, file a certificate of their absence or objection with the clerk of the company, and with the clerk of the county, or with the clerk of the county commissioner's court of the county in which the principal office of said company is located, they shall be exempt from the said liability.

§ 17. If any certificate or report made or public notice given by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

§ 18. No person holding stock in any such company, as executor, administrator, guardian, or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholders of such company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.

§ 19. Every such administrator, executor, guardian or trustee shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

§ 20. Every such company, before proceeding to construct a part of their road into or through any county named in their certificate of association, shall make a map and profile of the route intended to be adopted by such company; which shall be certified by a majority of the directors and filed in the office of the county clerk of such county, or with the clerk of the county commissioners' court of such county, for the inspection and examination of all parties interested therein.

§ 21. Every such corporation shall possess the general powers and be subject to the general liabilities and restrictions expressed in the special powers following, that is to say:

1. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad and for such purpose, by their officers, agents and servants, to enter upon lands or waters of any person, but subject to responsibility for all damages which they shall do thereto.

2. To receive, hold and take such voluntary grants and donations of real estate and other property, as shall be made to it, to aid in the construction, maintenance and accomodation of such railroad; but the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only.

3. To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers and surveyors and agents enter upon and take possession of and hold, and use all such lands and real estate and other property as may be necessary for the construction and maintenance of its railroad and stations, depots and other accommodations necessary to accomplish the object for which the corporation is created; but not until the compensation to be made therefor, as agreed upon by the parties, as ascertained as hereinafter prescribed, to be paid to the owner or owners thereof, or deposited as hereinafter di-

rected, unless the consent of such owner be given to enter into possession.

4. To lay out its road, not exceeding six rods wide, and to construct the same, and for the purposes of cuttings, embankments, and procuring stone and gravel, may take as much more land within the limits of its charter, in the manner provided hereinafter, as may be necessary far the proper construction and security of the road.

5. To construct their road upon or across any stream of water, water course, road, highway, railroad, or canal, which the route of its road shall intersect; but the corporation shall restore the stream or water course, road or highway thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness.

6. To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the ground of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every company whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points of manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court, as is provided hereinafter in respect to the taking of lands.

7. To purchase lands or take them, may change the line of its road whenever a majority of the directors shall so determine, as is hereinafter provided, but no such change shall vary the original route of such road to exceed one mile laterally.

8. To take, transport, carry and convey persons and prop-

erty on their roilroad, by the force and power of steam, of animals or any mechanical powers, or by any combination of them, and receive tolls or compensation therefor.

9. To erect and maintain all necessary and convenient buildings, stations, depots and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and obtain and hold the lands necessary therefor.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for any passenger and his ordinary baggage shall not exceed three cents a mile, *unless by special act of the legislature*, and shall be subject to alteration as hereinafter provided.

11. To borrow money, to be applied to the construction of their railroad and fixtures, and purchase of engines and cars, at such rates of interest as is hereinafter provided.

§ 22. Any number of persons, not less than thirteen, intending to organize a corporation under the provisions of this act, and every company that may hereafter organize under this act, may present a petition to the legislature, stating the place from and to which they propose to construct their road, and its location and route, with reasonable certainty, or that they intend to run the said road on the most direct and eligible route between the points of terminus, and praying the legislature to determine whether the construction of the said proposed road will be of sufficient public use to justify the taking of private property for the construction of the same. And if the legislature shall determine and decide by law that such proposed road will be of sufficient public utility to justify the taking of private property for constructing and maintaining said road, under the provisions of this act, then such company, when organized, may enter upon, take possession of and use all such lands, real estate, as may be required for the construction and maintenance of their

railroad, and the convenient accommodations appertaining to the same; making compensation, in the manner hereinafter provided, for all lands, real estate, thus taken possession of and used, except such as may be voluntarily given to or purchased at an agreed price by the said corporation. Whenever the said corporation shall not have acquired by gift or purchase any land, real estate, so acquired as aforesaid, or which may be affected by any operation connected by such construction and maintenance, the said corporation may present to the Circuit court of the district where said lands or real estate shall lie, a petition, signed by its attorney or agent, describing with convenient accuracy and certainty, by map or otherwise, the lands or real estate so required to be taken or affected, as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee, incumbrancer, as far as known to such attorney or agent, or appearing of record, and praying the appointment of commissioners to ascertain the compensation to be made to such owners and persons interested, for the taking or injuriously affecting such land or real estate as aforesaid. The court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of commissioners of appraisment between said corporation and the owners and persons interested in such lands and real estate, had been given at least ten days previously, to such owners personally, or to some person of suitable age, at their residence or on the premises, or by the publication thereof in a newspaper printed in the county in which such lands or real estate may lie. Such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county, known to such agent or attorney, whereat such notice could be delivered as aforesaid. The court may adjourn the proceedings from time to time; shall direct any future notice thereof to be given that may seem proper; shall have proofs and allegations

of all parties interested, touching the regularity of the proceedings; and shall, by an entry in its minutes, appoint five competent and disinterested persons commissioners to ascertain such compensation as aforesaid, specifying in such entry a time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take the oath required by the laws and constitution of this state, and any one of them may administer oaths to witnesses produced before them; and may adjourn, and may hold meetings for that purpose. Whenever they shall meet to hear proofs and allegations, unless by appointment of the court or pursuant to adjournment, they shall cause reasonable previous notice of such meetings to be given to the said owners or parties interested, or their attorney, or agent, and may each of them issue subpœnas, and compel witnesses to appear and testify; they shall hear the proofs and allegations of the parties, and any three or more of them, after reviewing the premises, without fear or favor or partiality, ascertain and certify the compensation proper to be made to the said owners and parties interested, for the lands or real estate to be taken, as well as all damages accruing to the owner of the lands and real estate aforesaid, taken in consequence of the condemnation of the same, or injuriously affected as aforesaid, making such deduction or allowance for real benefit or advantages which such owners or parties interested may derive from the construction of said road, and may in their discretion assess a separate reasonable sum in favor of such owners and parties interested, or of any person appointed by the court to appear as attorney for them, for costs, expenses and reasonable counsel fees. They, or majority of them, shall make, subscribe, and file with the clerk of the county, or with the clerk of the county commissioners' court, in which such lands or real estate shall lie, a certificate of their said ascertainment and assessment, in which such lands or real estate shall be described by map or other-

wise, with convenient accuracy and certainty. The court, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the state treasury, or other place for that purpose approved by the court, shall make and cause to be entered in its minutes a rule describing such lands or real estate, in manner aforesaid, such ascertainment of compensation, with the mode of making it, and such payment or deposit of the same compensation as aforesaid; a certificate copy of which rule shall be recorded and indexed in the proper recorder's office, in like manner and with the like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule the said corporation shall become seized in fee of all the lands and real estate described in said rule as required to be taken as aforesaid, during the continuance of the corporation, by this or any subsequent act, and may take possession of and hold and use the same for the purposes of said road, and shall thereupon be discharged from all claim for any damages by reason of any matter specified in said petition, certificate, or rule of said court. If at any time after an attempted or actual ascertainment of compensation under this or any other act, or any purchase by, or donation to said corporation, of any lands for the purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands for the use of said road, or if said corporation shall fail or be deemed defective, the said corporation may proceed anew to perfect such title, by procuring an ascertainment of the compensation proper to be made to any person or persons whose title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the court may, by a rule in that behalf made, authorize the said

corporation, if already in possession, and if not in possession, to take possession of and use such premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof; *Provided*, such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf, when ascertained; and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said commissioners shall be entitled to receive from said corporation a compensation not exceeding two dollars for each day actually employed by them in the discharge of their duties. Such compensation to be taxed and allowed by the court. If any commissioner so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the court. The proceedings hereby authorized may be had in the Circuit court in a county where the lands lie, and all motions to the Circuit court shall be made at a general or special term thereof in said county. The said commissioners shall file the said certificate in the county where the lands to be affected may lie, or in any adjacent county, and any clerk may transfer the same and the proceedings connected therewith to the clerk of the county in which the lands to be affected may lie, or of any county adjacent thereto, whenever such commissioner or clerk shall be so required by said corporation, its agent or attorney. And the legislature hereby reserves [the right] to itself to indicate the routes and termini of said roads, and the same shall not be constructed or commenced without the expressed sanction of the legislature of this state, by a law to be passed hereafter.

§ 23. In case any infant, idiot or insane person, or any unknown owner or owners, not personally notified to appear,

and who shall not appear after such notice, on the appointment of commissioners, shall be interested in any such lands, real estate and property, the court shall appoint some proper person to appear before the said commissioners and act as attorney for and behalf of such infant, idiot, insane person, unknown owner or non-appearing owner not personally served with notice.

§ 24. If at any time after the location of the track of said road, in whole or in part, and the filing of the map thereof, it shall appear to the directors of said company that the line in some parts thereof may be improved, it shall be lawful for the said directors, from time to time, to alter the line and cause a new map to be filed in the office, where the map showing the first location is or shall be filed, and may thereupon proceed to take possession of the lands embraced in such new location that may be required for the construction and maintenance of said road on such new line, and the convenient accommodations appertaining to the same, either by agreement with the owner or owners, or by such proceedings as near as may be, as are authorized under the preceding section of this act, and use the same in place of the line for which the new is substituted. Nothing in this act contained shall authorize the said company to make a location of their track within any city without the consent of the common council of said city.

§ 25. Whenever the tract of said railroad shall cross a bridge or highway, such road or highway may be carried under or over the track, as may be most expedient; and in cases where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road or highway, or such new line, as may be deemed requisite by said directors. Unless the lands so taken shall be purchased or voluntarily

given for the purposes aforesaid, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by said corporation to the owners and persons interested in such lands, the same when so taken or compensation made to become part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

§ 26. If any such corporation shall, for its purpose aforesaid, require any land belonging to the people of this state, or to any of the counties or towns, the general assembly of the state and the county and town officers respectively, having charge of such lands, may grant such lands to such corporation for a compensation which shall be agreed upon between them; and if they shall not agree upon a sale and price, the same may be taken by the corporation as is before provided in respect to other cases.

§ 27. Every conductor, baggage-master, engineer, brakeman or other servant of any such railroad corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office; and no other of said officers or servants without such badge shall have any authority to meddle or interfere with any passenger, his baggage or property.

§ 28. Every such corporation shall make an annual report to the secretary of this state of the operations of the year ending on the first day of January, which report shall be verified by the oaths of the treasurer and the acting superintendent of operations, and filed in his office by the twentieth day of January, in each year, and shall state:

1st. The capital stock and the amount actually paid in.

2d. The amount expended for the purchase of lands for the construction of the road, for buildings and for engines and cars, respectively.

3d. The amount and nature of its indebtedness, and the amounts due the corporation.

4th. The amount received for the transportation of passengers, of property, of the mails and from other sources.

5th. The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food, other agricultural products, manufactures, merchandise or other articles.

6th. The amount paid for repairs, engines, cars, buildings and salaries.

7th. The number and amount of dividends, and when paid.

8th. The number of engine houses and shops, of engines and cars, and their character.

9th. The number of miles run by passenger, freight and other trains, respectively.

10th. The number of men employed and their occupation.

11th. The number of persons injured in life or limb, and the causes of such injury.

12th. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

§ 29. Any such corporation, which shall neglect to make such report, shall be liable to a penalty of two hundred and fifty dollars, to be sued for in the name of the people of this state.

§ 30. The property belonging to any company organized under the provisions of this act shall be listed by the resident secretary or other proper officer, with the auditor of state, which shall be subject to the same rate of taxation as other similar property of individuals, and the revenue arising therefrom shall be paid into the state treasury, until the entire extinction of the internal improvement debt of the state, after which the said property shall be subjected to taxation, and the revenue arising therefrom paid as in the case of all other property in the state. The revenue derived under this section to applied to the payment of the public debt of the state.

§ 31. The state shall have a lien upon all railroads of said corporations, and their appurtenances and stock therein, for all penalties, taxes and dues which may accrue to the state from said corporations; which lien of the state shall take precedence of all demands, judgments or decrees against said corporations; and the citizens of this state shall have a lien upon all the personal property of said corporation to the amount of one hundred dollars, originally contracted within this state; which, after said lien of the state, shall take precedence of all other debts, demands, judgments or decrees, liens or mortgages, against said corporation.

§ 32. The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rates of toll, fare, freight, or other profits upon such road; but the same same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than fifteen per cent. per annum on the capital actually paid in; nor, unless on an examination of the amounts received and expended, to be made by the secretary of state, he shall ascertain that the net income divided by the company from all sources for the year then last past shall have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in.

§ 33. Any such corporation shall, when applied to by the postmaster general, convey the mail of the United States on their road or roads respectively, and in case such corporation shall not agree as to the rates of transportation thereof, and as to time, rate of speed, manner and condition of carrying the same, it shall be lawful for the governor of this state to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, times and conditions aforesaid, but such prices shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post office car. And in case the postmaster general shall require the mail to be carried at other hours, and at a higher speed than the passenger trains be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services to be fixed, aforesaid.

§ 34. If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select.

§ 35. Every such corporation shall start and run their cars for the transportation of passengers and property, at regular times to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junctions of other railroads, and at sidings and stopping places established for receiving and discharging way passengers and freight, and shall take, transport, and dis-

charge such passengers and property at, from, and to such places, on the due payment of tolls, freight or fare, legally authorized therefor.

§ 36. In case of the refusal by such corporation, or their agents, so to take and transport any passengers or property, or to deliver the same, or either of them, at the regular or appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

§ 37. In forming a passenger train, baggage or freight or merchandise or lumber cars shall not be placed in rear of the passenger cars, and if they or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly.

§ 38. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be wrung or whistled, at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed the road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to the state, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

§ 39. Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the railroad. On the same level said boards shall be elevated, so as not to obstruct the travel, and be easily seen by travelers; and on each side of said boards shall be

painted in capital letters, of at least the size of nine inches each, the words, "*Railroad crossing—Look out for the cars while the bell rings, or the whistle sounds.*" But this section shall not apply to streets in cities, or villages, unless the corporation be required to put up such boards by the officers having charge of such streets.

§ 40. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of any car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

§ 41. If any person shall willfully do, or cause to be done, any act or acts whatever whereby any building, construction, or work of any such corporation or any engines, machine or structures, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by means of such offense.

§ 42. All penalties imposed by this act may be sued for by the district attorney, and in the name of the people of the State of Illinois; and if such penalty be for a sum not exceeding one hundred dollars, then each suit may be brought before a justice of the peace.

§ 43. Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1st. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the secretary of state; and also like maps or parts thereof located in different counties, and file same in the office for recording deeds in the county in which said parts of said road shall lie, there to remain as of record forever.

2nd. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves.

§ 44. If any such corporation shall not, within five years after its incorporation, begin the construction of its road and expend thereon ten per cent. on the amount of its capital, and finish the road and put it in full operation in ten years thereafter, its act of incorporation shall become void.

§ 45. All existing railroad corporations within this state shall respectively have and possess all the powers and privileges, and be subject to all the duties and liabilities and provisions contained in this act, so far as they shall be applicable to their present conditions, and not inconsistent with their several charters, and all railroad companies that are now constructing their roads may acquire title to lands necessary for that purpose under the provisions of this act.

§ 46. This act shall take effect and be in force from and after its passage.

APPROVED November 5, 1849.

AN ACT to incorporate the Central Military Tract Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in General Assembly*, That William McMurtry, C. S. Colton, Jas. Bunce, W. Selden Gale, H. H. May, G. C. Lamphere, William A. Wood, Alfred Brown, Alva Wheeler, Peter Grouse, Amos Ward, Patrick Dunn, Daniel Meeks, Silas Willard, A. C. Wiley and their associates and successors, be and they are hereby created a body corporate, with perpetual succession, under the name and style of the "Central Military Tract Railroad Company," for the purpose of constructing, holding and using the railroad hereinafter mentioned.

§ 2. The said corporation are hereby authorized and empowered to construct, establish, hold and use a railroad commencing at Galesburg, in the county of Knox, and running from thence in a northeasterly direction, on the most direct and eligible route to, and to connect with the Rock Island and La Salle Railroad, at such point in the county of Henry or Bureau as the said company hereby incorporated may designate.

§ 3. The said company is hereby created and incorporated for the purpose of organizing under an act entitled, "An Act to provide for a general system of railroad incorporations," in force November 5th, 1849, and in all things shall be governed by the provisions thereof, and shall be entitled to have and exercise the powers and privileges and be subject to the liabilities therein enumerated: *Provided*, that the foregoing corporation may attach themselves to and form a part of the Northern Cross Railroad Company, in such manner or on such terms as said compnnies shall agree.

§ 4. The said company is hereby authorized and empowered to borrow money for the construction of said road, and for the purchase of the rolling stock, fixtures, etc., and to pledge the road and the property of said company for the payment of the said moneys so borrowed.

§ 5. This act is to take effect from and after its passage.

APPROVED February 15, 1851.

AN ACT to amend an act entitled "An Act to incorporate the Central Military Tract Railroad Company."

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That William McMurtry, George C. Lamphere, James Bunce, Silas Willard,

Chauncey S. Colton, Alfred Brown, Edwin G. Ellet, Edward Hollister, Amos Ward, Sylvester Blish, Barney M. Jackson, Myrtle G. Brace and William Maxwell, and their associates, subscribers to the stock of the Central Military Tract Railroad Company, and all such persons as shall hereafter become stockholders in said company, shall be and are hereby declared a body politic and corporate, by the name and style of "Central Military Tract Railroad Company," with perpetual succession, and under that name and style shall be capable of suing and being sued, implead and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their said corporate name and style shall be capable in law of contracting and being contracted with; shall be and are hereby declared invested with all the powers, privileges, immunities and franchises, and of acquiring by purchase or otherwise, and holding and conveying real and personal estate which may be needful to carry into effect fully the purposes and objects of this act.

§ 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad, with one or more tracks, from the town of Galesburg, in the county of Knox, in a north-easterly direction, on the most direct and eligible route towards the city of Chicago, to a point to be designated by the said company, on or near the line of the Chicago and Rock Island Railroad, or on or near the line of any other railroad or railroads connecting with or extending to the said city of Chicago, with a branch of the same to the town of Henderson, in the county of Knox.

§ 3. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, but not exceeding two hundred

feet in width through its entire length; may enter upon and take possession of, and use all and singular any lands, streams and materials of every kind, for the location of depots and stopping stages; for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turn-outs, engine-houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the state are hereby granted to said corporation for said purposes, but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in " An act to provide for a general system of railroad incorporations," approved November fifth, one thousand eight hundred and forty-nine, and the final decision or award shall vest in the corporation all the rights, franchises and immunities in said act contemplated and provided: *Provided*, that the appeal allowed by the provisions of the aforesaid act shall not affect the possession by said company of the land appraised; and when the appeal is made by others than the company, the same shall not be allowed, except on a stipulation of the party appealing that the said company may enter upon and use the lands described in the petition for the uses and purposes in said petition set forth, upon said company giving bond and security, to be approved by the clerk of said court, that they will pay all costs and damages that may be awarded against said company on the hearing of said appeal. The said company shall have power and authority to receive, take and hold all such voluntary grants and donations of land and real estate for the purposes of said railroad as may have been or shall be made to said company, to aid in the construction, accommodation and maintenance of said railroad; and said company may contract and agree with the owners or occupiers of any land

upon which said company may wish to construct said railroad, or which said company may wish to use or occupy for the purpose of procuring materials to be used in or about the construction, maintenance or enjoyment of said railroad, or which said company may wish to use or occupy for any purpose connected with said railroad.

§ 4. The capital stock of said company shall be one hundred thousand dollars, which may be increased from time to time, by a vote of a majority, in interest, of the stockholders, at their annual meeting, or at any special meeting which shall be called for the purpose by the directors of said company, to any sum not exceeding the amount required to be expended on account of said road; which stock shall be divided in shares of one hundred dollars each, which shall be deemed personal property, and may be issued, certified, transferred and registered in such manner and at such places as may be ordered and directed by the board of directors. The board of directors shall require payment of the capital stock subscribed, in such sums, at such times, and in such proportions, and on such conditions, as they shall see fit, under the penalty of the forfeiture of all previous payments thereon, and shall give notice to the stockholders of the payments thus required, and of the place when and where the same are to be paid, at least thirty days previous to the payment of the same The said board of directors shall cause the books to be kept open until the full amount of the capital stock, as above provided, is subscribed; and when additional stock shall be voted by the stockholders, as above provided, the directors shall cause books to be opened for subscription to said stock in such manner and at such time and places as they shall direct.

§ 5. All the corporate powers of said company shall be vested in and exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors

shall consist of thirteen stockholders, six of whom shall be resident within fifteen miles of the line of said railroad, as heretofore located, and the remainder of whom may or not be residents of the state. The board of directors shall be chosen every year by the stockholders, each share having one vote, to be given in person or by proxy, and shall hold their offices until their successors shall be elected and qualified. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining. Such appointees to hold their offices until the next election of directors. Other officers, agents and servants, whether members of the board or otherwise, may be appointed, employed, paid and dismissed, under such rules and regulations as the board of directors may from time to time adopt, until the first Wednesday of June, 1853. The board of directors shall consist of William McMurty, George C. Lamphere, James Bunce, Silas Willard, Chauncey S. Colton, Edwin G. Ellet, Edward Hollister, Amos Ward, Sylvester Blish, Barney M. Jackson, Myrtle G. Brace, William Maxwell and Alfred Brown. Upon the first Wednesday of June, 1853, and annually thereafter, on each first Wednesday of June, shall be held the annual meeting of the stockholders, at which the directors shall be elected. All meetings of the directors shall be at such place as the board may appoint, and of the stockholders shall be held at the town of Galesburg, or at some place not more than five miles from the line of said railroad. All meetings of the stockholders, except the annual meeting, shall be called by the directors, and notice of such meeting shall be published at last twenty days before the time appointed for such meeting, in some newspaper published in the vicinity of the railroad. If, at any meeting of the stockholders, a majority of the stock shall not be represented, either by the holders in person, or by proxy, no business shall be done, but the stockholders present may adjourn from day to day, until a majority of the stock is represented at the meeting

Whenever the entire amount of the capital stock, as hereinafter provided, shall have been subscribed, it shall be the duty of the directors then in office to call a meeting of the stockholders, for the purpose of electing new directors. Upon the election and qualification of such newly elected directors, the term of the old directors shall expire, and the newly elected directors shall hold until the regular election at the next annual meeting.

§ 6. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfill the purposes and and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business and interest of the company: *Provided*, that the same be not repugnant to the constitution and laws of the United States or of this state, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time, by their by-laws determine, and to levy and collect the same for the use of the said company. The tranportation of persons and property, the width of track, and all other matters and things respecting the use of said road, shall be in conformity to such rules and regulations as the said board of directors shall from time to time determine.

§ 7. If any person shall carelessly, willfully, maliciously or wantonly delay, hinder or obstruct the passage of any carriage on said road or branches, or shall place or cause to be placed any material thereon, or in any way trespass upon, spoil, injure or destroy said road or branches, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with its location, survey, construction or management, all persons committing or aiding and abetting in the commission of such trespass or offense, shall forfeit and pay to

the said company treble such damagees as shall be found before any court of competent jurisdiction; and further, such offender shall be liable to indictment in the county within whose jurisdiction the offense may be committed, and to pay a fine of not less than thirty nor more than one hundred dollars, to the use of the people of the State of Illinois, or may be imprisoned in the penitentiary for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

§ 8. Said company may construct their said road on or across any stream of water or water course, road highway, railroad or canal which the route of its road shall intersect, but the corporation shall restore the stream or water course, road or highway thus interseceted to its former state, or in a sufficient manner not to have impaired its usefulness. Whenever the route of the said railroad shall intersect any road or highway, the said company shall have power to change the line of such road or highway, if such change shall be desirable, and shall not impair the usefulness of such road or highway, and the said company may take such additional lands for the construction of such roads or highways as may be deemed requisite by said company. Unless the lands so taken shall be purchased or voluntarily given, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by said company to the owner or person interested in such lands; the same when so taken to become part of such intersecting road or highway, in such manner and by such time as the adjacent parts of the same highway may be held for highway purposes.

§ 9. And when the route of the said road shall intersect, cross or connect with or run along or upon the line of any other railroad, the said company shall join with such other company in making all necessary turn-outs, sidelings, and switch, and

other conveniences necessary to further the objects of such connection; and when the route of any other company shall be occupied as aforesaid, just compensation shall be made to such other company for all expenditures made by them in the location of such road, and all connections with other roads as aforesaid shall be made, and facilities in the transhipment of freight and passengers, and interchange of cars afforded by each, over the respective roads, upon fair and equitable terms; and in case the said companies cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossing and connection, the transhipment of freight and passengers, the interchange of cars, the same shall be ascertained and determined by three commissioners, one to be chosen by each of said companies, and the two so chosen to choose a third, and in case they cannot agree upon the choice of the third person, he shall be appointed by the judge of the district court of the United States for the district of Illinois, and the decision of the three so chosen to be final.

§ 10. Said company is hereby authorized, from time to time, to borrow such sum of money as may [be] necessary for completing and finishing, or operating their said railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage their corporate property and franchises, or convey the same by deed of trust, to secure the payment of any debt contracted by said company for the purposes aforesaid; and the directors of said company may make the bonds issued as aforesaid convertible into stock, at the option of the holder thereof, at any time not exceeding ten years from the date of such bond.

§ 11. The said company shall prosecute the construction of the said road with all practicable speed, commencing the construction at or near the northern terminus thereof, and shall complete the same to the town of Galesburg and Henderson

within eighteen months after the said road road shall be constructed within fifteen miles of the town of Galesburg.

§ 12. This act shall be deemed a public act, and shall be in force from and after its passage.

APPROVED June 19, 1852.

AN ACT to incorporate the Decatur and Indianapolis Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That David L. Allen, Wm. Martin, J. C. Pugh, Wm. S. Cressey, Richard J. Oglesby, Henry Prather, T. H. Haywood, W. D. Watson, John Rucker, E. J. Howd, Sam'l Yamale, J. J. Peddecord, B. H. Cassell and J. R. Hammett, their associates, successors and assigns, be and they are hereby constituted a body corporate and politic, under the name and style of "The Decatur and Indianapolis Railroad Company," for the purpose of surveying, locating, constructing, completing and operating a railroad from the town of Decatur, in Macon county, in the State of Illinois, and thence in a direct line, upon the most eligible route, to the east line of the State of Illinois, in the direction of Indianapolis, in the State of Indiana, whenever the said persons, or their assigns and associates, shall organize in full compliance with the provisions of an act entitled "An act to provide for a general system of railroad incorporations," approved November 5, A. D. 1849.

§ 2. Said road with the points above herein indicated, is hereby declared of sufficient public utility to justify the taking of private property for the location, construction and maintenance thereof; and the company is hereby authorized to take private property for the purpose of constructing and maintaining

the same, in the manner prescribed in the act referred to as aforesaid.

§ 3. Said company is hereby authorized and empowered to unite and form a junction with the Indiana and Illinois Central Railway Company, or any other company which is or may hereafter be organized in the State of Indiana, terminating on said line; and also to unite and consolidate with the said Indiana and Illinois Central Railway Company, upon such terms and conditions as the directors shall eventually agree upon; and in the event that said companies shall consolidate, then, and in that case, there shall be but thirteen directors on the whole line of road so consolidated, and the number to reside in each state shall be determined as in the case of consolidation.

§ 4. This act shall be in force from and after its passage.

APPROVED February 8, 1853.

AN ACT to incorporate the Decatur and Pekin Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Richard J. Oglesby, Henry Prather, W. D. Watson, J. C. Pugh, David L. Allen, Jabez Capps, J. F. C. Mershon, William H. Lowry, John Meyers, George W. Turley, Geo. Musick, Solomon Kahn, Joseph Orenderf, W. S. Maus, John W. Case, John Smith, J. C. Thompson and Wm. D. Briggs, their associates, successors and assigns, be and are hereby constituted a body corporate and politic, under the name and style of "The Decatur and Pekin Railroad Company," for the purpose of surveying, locating, constructing, completing and operating a railroad from the town of Decatur, in Macon county, in the State of Illinois, and thence upon the most eligible route through the towns of Mt.

Pulaski, and Camden, in Logan county, in the State of Illinois, to the town of Pekin, in Tazewell county, Illinois, whenever the said persons, or their assigns and associates, shall organize in full compliance with the provisions of an act entitled "An Act to provide for a general system of railroad incorporations," approved November 5, A. D. 1849.

§ 2. Any real estate which may become the property of said company under the provisions of the preceding section, shall not extend over fifteen miles from the said road, nor shall the company hold such real estate for a longer time than ten years after the said road shall be completed and in running order.

§ 3. Whenever the said company shall have organized as is herein provided, it is hereby declared to be of sufficient use to justify the taking of private property for the construction and maintaining said road, under the provisions of said act to provide for a general system of railroad incorporations.

§ 4. This act shall be in force from and after its passage.

APPROVED February 11, 1853.

AN ACT to incorporate the Decatur and Danville Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Samuel Rea, Jacob Stangler, Wm. Rea, Wm. S. Cressey, Anderson Froman, Wm. Martin, R. G. Oglesby, Joseph King, H. C. Johns, James McReynolds, C. R. Ward, Wm. H. Pratt, J. C. Johnson, Franklin Harris, W. D. Summers, W. N. Coler, Asa Gere, J. W. Jaqueth, Wm. Fithian, Enoch Kingsbury, Amos Williams, Samuel Craig and Milton Davis, their associates, successors and assigns, be and they are hereby constituted a

body corporate and politic under the name and style of "The Decatur and Danville Railroad Company," for the purpose of surveying, locating, constructing, completing, operating and maintaining a railroad from the town of Decatur, in Macon county, Illinois, thence upon the most eligible and direct route through the town of Monticello, in Piatt county, and the town of Urbana, in Champaign county to the town of Danville, Vermillion county, and thence to the state line of Indiana, in the direction of LaFayette or Covington in the State of Indiana, whenever the said persons, or their assigns, shall organize in full compliance with the provisions of the act entitled "An Act to provide for a general system of railroad incorporations," approved November 5, 1849.

§ 2. Whenever the said company shall have organized as herein provided, it is hereby declared that the object is of sufficient importance and public use to justify the taking of private property for constructing and maintaining said road under the provisions of said act.

§ 3. This act shall take effect and be in force from and after its passage.

APPROVED Feb. 12, 1853.

AN ACT to incorporate the Waverly and Auburn Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That J. M. Metcalf William Rhodes, R. H. Nelson, A. Coe, W. Lindley, Thomas, Lumer, George Carter, James W. Munson, Isaiah Turney, Newton Cloud, William Deatherage, J. H. Brown, W. W. Hilton, A. J. Turner, Wm. A. Hutchinson, J. W. Ross, A. Edgemon, C. J. Salter, T. E. Curtis, W. W. Post, Charley Hopper,

C. C. Sacket and Jacob Wimple, their associates, successors and assigns, be and are hereby constituted a body corporate and politic, under the name and style of "The Waverly and Auburn Railroad Company," for the purpose of surveying, locating, constructing, completing and operating a railroad from the town of Waverly, in Morgan county, to Auburn depot, in Sangamon county, whenever the said persons or their assigns and associates shall organize in full compliance with the provisions of an act entitled "An Act to provide for a general system of railroad incorporations," approved 5th November, A. D. 1849.

§ 2. Any real estate that may become the property of said company under the provisions of the preceding section shall not extend over fifteen miles from said road, nor shall the company hold such real estate for a longer time than ten years after the said road shall be completed and in running order.

§ 3. Said board, with the points herein indicated, is hereby declared to be of sufficient public utility to justify the taking of private property for the location, construction and maintaining thereof; and the company is hereby authorized to take private property for the purpose of constructing and maintaining the same in the manner prescribed in the act referred to as aforesaid.

§ 4. This act shall be in force from and after its passage.

APPROVED February 12, 1853.

AN ACT supplemental to an act to amend the charter of the Central Military Tract Railroad Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the act entitled an act to amend an act entitled "An Act to incorporate the Central

Military Tract Railroad Company," be so amended as to authorize the said company to extend a branch of said railroad from the town of Henderson, in Knox county, to the city of Monmouth, in Warren county.

§ 2. All of the powers, privileges and franchises given and conferred upon said company in its original and amended charter, shall be and are hereby given to said company in construction of said branch road.

§ 3. This act to take effect and be in force from and after its passage.

APPROVED February 11, 1853.

AN ACT to enable railroad and plank road companies to consolidate their stock.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That all railroad companies and plank road companies now organized, or hereafter to be organized, which now have or hereafter may have their termini fixed by law, whenever their said road or roads intersect by continuous lines, be and the same are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this state whenever their lines connect with the lines of such companies out of this state.

§ 2. Such consolidation may take place whenever the said companies shall respectively agree upon the terms and conditions of the same; and the said companies when so consolidated shall be authorized to agree upon the name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic,

shall have a common seal or seals, and by such name or names shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, and shall have all the powers, franchises and immunities which the said respective companies shall have, by virtue of their respective charters, before such consolidation passed within the State of Illinois; *Provided*, that each consolidated company shall file for record in the office of the secretary of state a copy of their said articles of consolidation, evidenced by the signature of the presiding officer of each of the said companies, and the corporate seal thereof.

§ 3. The corporation or corporations formed by virtue of the provisions of this act shall have power to increase their capital stock to any amount required by resolution of their respective boards of directors, not exceeding the amount of the cost of the roads and works constructed and equipped by them, to borrow money and fix the rate of interest therefor, to issue bonds and the same to sell at such price as they may deem expedient, such sales being hereby authorized and confirmed, and to make any other contracts authorized by the by-laws of the said corporation or corporations, within the purview of their said charters.

§ 4. Such corporation or corporations, when so formed, shall have the same power to consolidate with other companies when their lines connect, upon such terms as may be agreed upon by them respectively.

§ 5. No company in this state shall be authorized under the provisions of this act to consolidate with any company beyond the limits of the state, until the termini of such company in this state shall first have been fixed by the laws of this state at the boundary line thereof.

§ 6. This act shall not be so construed as to authorize any plank road not having power to build a railroad to consolidate

with any railroad so as to lay a railroad upon any plank road track, until the termini of such railroad shall have been expressly fixed by law, nor shall any plank road so consolidate with any railroad unless authorized by law to lay a railroad track.

§ 7. All proceedings for the purpose of consolidation as above provided shall be fixed and regulated by the by-laws of the respective companies desiring such consolidation; *Provided*, that such consolidation shall not take place until the terms of such consolidation shall have been approved by a majority of the stockholders in interest, in person or by proxy, at an annual or called meeting, of which due notice shall be given, by publication or in writing, to all stockholders interested, or the same be approved by the written consent of a majority of stockholders in interest, filed in the office of their company.

§ 8. When it shall be necessary for the construction of any railroad to cross the track of any other railroad, stream of water, water course, road or highway, which it may intersect or cross by reason of such extension into or through any adjoining state, or by reason of its consolidation with any other road or roads, company or companies, as provided in this act, it shall be lawful for said company to construct their road across or over the same by such track or tracks, bridge or bridges, viaduct or viaducts, as may be necessary to the convenience of the extension or consolidation of said road; *Provided*, said company shall restore the railroad, stream of water, water course, road or highway thus intersected or crossed to its former state, or in a sufficient manner not materially to interfere with its usefulness.

§ 9. This act shall take effect from and after its passage.

Approved February 28, 1854.

AN ACT to establish a reasonable maximum rate of charges, for the transportation of passengers on railroads in this State.—Approved 15th April, 1871; in force 1st July, 1871.

SECTION 1. All railroad corporations organized or doing business in this state, under the laws or authority thereof, shall be limited to the rates of compensation for the transportation of passengers which are herein prescribed.

§ 2. All railroads in this state shall be classified according to the gross amount of their respective annual earnings per mile, as follows: Class A shall include all railroads whose gross annual earnings per mile shall be $10,000 or more. Class B shall include all railroads whose gross annual earnings per mile shall be $8,000, or any sum in excess thereof less than $10,000. Class C shall include all railroads whose gross annual earnings per mile shall be $4,000, or any sum in excess thereof less than $8,000. Class D shall include all railroads whose gross annual earnings per mile shall be any sum less than $4,000.

§ 3. All railroad corporations, according to their classification as herein prescribed, shall be limited to compensation per mile for the transportation of any person, with ordinary baggage, not exceeding one hundred pounds in weight, as follows: Class A, two and one-half cents; Class B, three cents; Class C, four cents; Class D, five and one-half cents; *provided* that no such corporation shall charge, demand or receive any greater compensation per mile for the transportation of children twelve years of age, or under, than half the rates above prescribed; *and provided, also*, a charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train.

§ 4. All railroad corporations shall keep posted in a con-

spicuous place in their depots, a printed copy of this act, with a table of distances between each and every station of their road, and a statement showing the class to which its road belongs.

§ 5. Any railroad corporation which shall charge, demand or receive any greater compensation for the transportation of any passenger than is authorized by this act, shall be liable to the party agrieved in the sum of $500, and the same may be recovered, together with all costs of suit and a reasonable attorney's fee, to be taxed by the court, in an action of debt in any court having competent jurisdiction.

§ 6. If any final judgment shall be recovered against any such corporation, under the provisions of section 5 of this act, a fifth time, such corporation shall be deemed to have forfeited all its rights, privileges and franchises, and it shall be the duty of the states attorney in any circuit or county through or into which its road may run, to proceed against such railroad corporation so violating any provision of this act, upon information, in the nature of quo warranto, to judgment of ouster and final execution. And in addition to the procedure herein provided, such corporation may be proceeded against in such other manner as may be provided by law.

§ 7. This act shall not be held to apply to any city or street railroad.

108-5-26

OFFICE SUPREME COURT U. S.
FILED
FEB 23 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

No. 135.—Oct. T., 1882.

NEAL RUGGLES, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

ADDENDUM TO PLAINTIFF'S BRIEFS, AND REPLY TO SOME POINTS IN DEFENDANT'S BRIEFS.

There have been filed in the cause two separate briefs of the Attorney-General of the State and his three associates, and in reply to some of the most material positions taken therein we submit as follows.

I.

The brief of Messrs. Edsall & Hawley, from page 6 to 18 inclusive, is devoted to an analysis of the charters of the Aurora Branch Road, the Central Military Tract Road, the Peoria & Oquawka Road, and the Northern Cross Road, which by consolidation, as shown by the stipulation contained in the record, constituted the Chicago, Burlington & Quincy R. R. at the period in question, and it sets out also the Act under which such consolidation was legally effected.

The comments of the defendant upon the features of those charters do not seem to plaintiff to require remark; but the united effect of those charters under the Act authorizing consolidation, in plaintiff's view, have an important

bearing on the question stated by defendant at the close of this analysis, namely, — "whether by the enactment of those "several special Acts of Incorporation under which the cor- "porations were organized which form the Chicago, Burling- "ton & Quincy Railroad Company, the General Assembly "were deprived of the power to pass laws prescribing "reasonable maximum rates."

The Act authorizing such consolidation declares "that the "consolidated Company shall be a corporate body, having a "common seal, may sue and be sued, make contracts, etc., "*and shall have all the powers, franchises, and immunities* "*which such respective companies shall have by virtue of their* "*respective charters before such consolidation.*"

The briefs of plaintiff are based on the assumption that consolidation under this Act confers on the new consolidated company "all the powers, franchises and immunities" of each of the consolidated companies, and not that each constituent road is to be operated separately in conformity to whatsoever may have been the peculiarities or limitations of its original charter. The embarrassments, not to say absurdity, of any other construction of the clear terms of the Consolidation Act, are obvious, and that construction is, we submit, sustained by this court in R. R. Co. vs. Maine, 96 U. S. R. p. 499.

Based upon the soundness of this view, plaintiff's contention was, and is, not merely that under the special legislation of the State there was conferred on the Military Tract Road the right to fix its rates free from legislative control, but that by its subsequent consolidation with the Chicago, Burlington & Quincy Railroad Company there was (even if each of the charters of all the roads thus consolidated had not, as we contend, granted the same powers) transferred to the new corporation its powers, franchises and immunities to fix its rates.

The charter of one of these Consolidated Companies (the

Aurora Branch Road) illustrates plaintiff's view, and furnishes also important aid in the construction of the grant to plaintiff, since it establishes beyond controversy that prior to and at the time of plaintiff's grant it was the policy of the State to confer the power to fix rates irrespective of public considerations (except to invite enterprise) and subservient only to the interest of the grantees. This charter of the above company authorized the grantees to "fix rates of tolls "for transportation of persons and property thereon as may "be deemed *suitable to their interests.*" (Quoted in defendant's brief, p. 8.) Was this right extinguished by consolidation, notwithstanding the clear provisions of the Act authorizing such consolidation?

Again, as a further aid to the construction of the grant now in question, arising from a scrutiny of these charters, we submit:—

That each of the companies thus subsequently consolidated with the Chicago, Burlington and Quincy Railroad Company, except the Military Tract R. R., was chartered prior to the Act of November 5, 1849, by which the State established its general system.

That the terms of the grants of power to fix rates contained in each of them (except the one which expressly authorizes such rates to be fixed "as the corporation shall deem suitable for its interests") confer the power, without limitation, in the clearest and most absolute terms.

That the Act of February 15, 1865, passed after the consolidations of those companies with the Chicago, Burlington and Quincy Railroad Company, and authorizing that company to extend its road to a point on the line of the Northwestern Road, in Kane County (Brief of Edsall & Hawley, pp. 9 and 10) by Section 4th, declares "the right to "regulate the tariff for transporting freight and passengers "*on so much of said road as is by this Act relaid*, is expressly "reserved to the General Assembly," and is thus a clear

thereby subjected to future legislation. To hold that a clear and specific grant of powers contained in a charter (for such is the contention of plaintiff in error, and such the necessary assumption in dealing with the proposition) may be by future legislation abrogated by reason of the limitation contained in the same charter of the power to make by-laws, viz., that the same "be not repugnant to the Consti-"tion and laws of the United States, or of the State, or "repugnant to this Act," would be somewhat extraordinary, regarded merely as a legislative method of reserving the power to repeal or modify the grant.

But when regard is had to the qualification of the proviso, viz., that such by-laws "*are not to be repugnant to this Act*," the necessary legal implication is that all by-laws consistent with the Act are within the granted irrevocable powers. The proposition of the defendant assumes that such is the character of the grant in this case construed by itself, but that the proviso in the by-laws is the reservation of a power to modify or repeal this absolute grant. (See Ins. Co. vs. Goodfellow, 9th Missouri R. 149.)

This view is perhaps well illustrated by a reference to the original charter of the Military Tract R. R. Company, namely, the Act of November 5th, 1849.

By the 12th Section of that Act (appendix, p. 6), there was granted to the directors the power to make by-laws "not inconsistent to the laws of the State."

The 10th Subdivision of Article 21st (appendix, p. 11) authorized the corporation to regulate the time and manner in which passengers and property shall be transported, and the toll and compensation to be received therefor; and the 32d Section (appendix, p. 19) restricts the interference of the Legislature with rates until the profits exceed 15 per cent. of the capital.

Could the above limitation upon the powers to make by-laws be deemed by implication a reservation of power to

repeal and modify the express grant of the power to fix rates free from legislative control until the profits should exceed 15 per cent.?

III.

As to so much of the briefs of the defendant as is devoted to the discussion of the principles adopted by this and other courts in the construction of corporate charters, there is nothing which invites reply. The difference in the contentions of the parties does not draw these principles into controversy. The conflict of views turns upon the application of those principles to the terms of the grant in question. For the plaintiff it is submitted, that if the grant were not to be construed in reference to the original charter and the policy of the State, its terms must by just legal construction be held to confer an exclusive and enduring right to fix its rates while the charter continues; and that, if this were doubtful, all doubts are removed when both the original and amended charters are construed together.

The contention of the defendant takes no notice of the original charter, or of the fact that the grant in question is made in amendment of that charter, but it declares that all such grants are to be strictly construed, and nothing can be taken against the State by presumption or inference (a doctrine which we fully admit); and defendant then proceeds to state its ground as follows: "In the case at bar, inasmuch "as there is no provision fixing the maximum rates, accom- "panied with a declaration that the same shall not be "reduced by the Legislature * * * the prohibition of "the exercise of such power cannot be inferred or implied."

In support of this ground, defendant relies on the case of the Delaware Railroad tax, 18 Wall., p. 225, where the charter required the company "to pay annually into the treasury of the State a tax of one and a quarter per cent. on its capital stock." This Court merely decided that the provision, not

being accompanied with words, indicating the intent of the Legislature that no further or different tax should be subsequently levied, such subsequent tax was valid. This hardly supports defendant's proposition, nor does it warrant the doctrine that every distinct grant by the Government, be it of power or franchise, is not to be construed as definite according to its terms, but is always open to be qualified or rescinded, unless it be accompanied with a distinct provision negativing the right thus to qualify or abrogate?

The grant of power, in the present case, to directors to fix rates, is *ex vi termini* exclusive, unless it be qualified so as to show that it may at any time be resumed and enjoyed by the State. The grant is not to be construed as temporary, but enduring, unless in terms its continued existence is negatived. In other words, instead of the doctrine of the defendant, that unless the power of the Government to interfere be expressly excluded, it must be held to exist, the true doctrine is, that the power does not exist unless expressly provided for.

This is plaintiff's contention, founded on the words of the grant, without reference to the fact that those words are an amendment of an original charter. But when such reference is had, and the peculiar legislation of the State in regard to the Military Tract Railroad Company is taken into view, then, although if the terms of the grant had stood alone the intention could possibly be held to be doubtful, yet we submit, that on reference to these features, there is nothing left for construction.

IV.

Perhaps it is needless to add, that if, as defendant suggests (p. 29), the "grant was not designed to be a substantive or independent grant of power, but an authority to embrace the subject of tolls in their by-laws," so that the powers of

the company as to rates must be referred back to the original charter, and thus it takes nothing under the amendment of that charter; then, it must be admitted by plaintiff that the Act of April 15, 1871, passed by the State, regulating fares, does not upon the facts in this case violate the rights of plaintiff under that original charter, since that charter allows passenger rates at three cents per mile, and thus the plaintiff will fail in this case, but be remitted to the right to so fix its combined rates as to enjoy a profit of fifteen per cent. on its capital.

V.

The conclusion of the brief of Messrs. Edsall & Hawley (p. 67. *et seq.*) contains the reply to the opening brief of the plaintiff.

After a denial that it has been declared by this Court that by contract contained in a charter the Legislature may grant to a corporation the exclusive power to fix its rates, it asserts, that if plaintiff's charter is to be construed to grant "the absolute and uncontrollable authority to fix its own "rates * * * the question remains, whether such provi- "sion possesses the qualities and is entitled to protection as "an obligatory contract" (p. 68).

It asserts that "Acts of Incorporation may and often do "contain provisions which only have force and effect as mere "laws, and are therefore subject to amendment and repeal" (p. 69). And in order to maintain the view that this conceded unconditional grant to plaintiff of power to fix its rates is not a contract "but a mere law, subject to amendment or repeal," defendant refers to the doctrine applicable to grants of charters by the King, which doctrine it assumes to be that "charters granted by him conferring corporate fran- "chises were valid so far as they constituted contracts; if "they contained provisions not properly the subject of "contracts, or not within the scope of authority to make

"contracts, such provisions were void and conferred no "rights" (p. 69).

Now the proposition thus stated amounts to this: Provisions not within the scope of authority are void; provisions not properly the subject of contract are void. In such doctrine plaintiff must certainly acquiesce; yet it hardly teaches that a grant of power to fix rates is not a contract but a mere law subject to amendment or repeal.

The authorities cited by the defendant in assumed support of its views do, we admit, show that in grants of franchises by the Crown the right to demand from the community "arbitrary and excessive duties or tolls, which are *outrageous* and unreasonable," though granted in terms, are void.

Such, doubtless, is the common law limitation of the prerogatives of the Crown, but what application that doctrine has to parliamentary or legislative grants is not obvious. It is a groundless assumption of defendant that this restriction on the powers of the Crown is a restraint also upon the omnipotence of Parliament, or the exercise by Legislatures of their constitutional functions, as is shown by Slaughter House Cases, 16 Wall, pp. 65, 66.

VI.

As to the rules for the construction of charters declared by this Court, we desire to add the following extracts from Wilmington R.R. vs. Reid, 13 Wall, 267; Pacific R.R. vs. Maguire, 20 Wall, 43; and Binghampton Bridge Case, 3 Wall, 76.

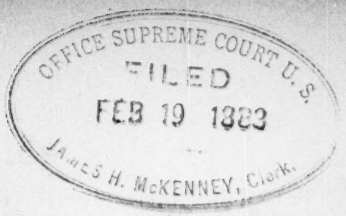
"If the contract is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the "duty of the Court to give effect to it, the same as if it were "a contract between private persons, without regard to the "supposed injurious effects upon the public interests." (13 Wall, 267; affirmed, 20 Wall, 43.)

"It is evident that what was then considered a great "scheme of internal improvement was in the mind of the "Legislature. Such a scheme was, at that early period "in the history of the State, not of easy solution. It "required more energy and foresight, and involved greater "hazard. in the commencement of this century, to build "turnpike roads through an unbroken wilderness, and erect "bridges over dangerous streams, than it would *now* to "checker the surface of a State with railways. These con- "siderations are great helps in arriving at a correct knowl- "edge of the intention of the Legislature, and in giving a "proper construction to the grants that were made. *For it "should never be lost sight of that the main canon of interpre- "tation of a contract is to ascertain what the parties themselves "meant and understood.*" (Binghampton Bridge Case, 3 Wall., at p. 76.)

S. Bartlett

of Counsel for P. E.

108-526



Supreme Court of the United States.

No. 135.

NEAL RUGGLES, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

Supplemental Brief in behalf of Plaintiff.

The judgment of the Court in this case must, we think, depend on the view to be taken of the peculiar legislation of the State applicable to the plaintiff corporation, and, so far as we can find, to that corporation alone.

The question for discussion is, having regard to that legislation, What is the true interpretation of the following clause in the 6th section of plaintiff's amended charter: "The board of directors shall have power to establish such rates of toll for the conveyance of persons or "property upon the same as they shall from time to time by "their by-laws determine, and to levy and collect the same "for the use of said company."

The answer to this question requires a scrutiny of plaintiff's original charter (February 15th, 1851), of the amendment thereof (June 19th, 1852), and of the then existing general law of the State (November 5th, 1849), entitled "An Act to provide for a general system of Rail-"road Incorporation," to which last-named Act plaintiff's original charter refers for its powers, rights, and duties.

Plaintiff's original charter incorporates the parties named therein, and their associates, under the name and style of the "Central Military Tract Railroad Company, for "the purpose of constructing, holding and using the rail-"road hereinafter mentioned," which corporation, as shown by the stipulation filed in the case, subsequently became legally consolidated with and forms part of the Chicago, Burlington and Quincy Railroad Company.

It authorized the construction of a road beginning at Galesburg in the county of Knox, and running from thence to connect with the Rock Island and La Salle Railroad, at such point in the county of Henry or Bureau as the company might designate.

It then declares that the company is created and incorporated *for the purpose of organizing under the Act entitled* "*An Act to provide for a general system of Railroad* "*Incorporations, in force November 5th*, 1849, and in all "things shall be governed by the provisions thereof, and "shall be entitled to have and exercise the powers and privi-"leges, and be subject to the liabilities therein enumerated." It adds a power to attach itself to and form a part of the Northern Cross Railroad Company.

This entire Act of November 5th, 1849, together with all the other Acts of the Legislature of Illinois herein referred to, are contained in a separate appendix to plaintiff's original brief. We now produce those of its sections which plaintiff in error deems material, namely,—

Section 21, Article 3. "Every such corporation shall "possess the general powers and be subject to the general "liabilities and restrictions expressed in the *special* powers "following:" that is to say,—

Article 8. "To take, transport, carry and convey persons "and property on their railroad by the force and power of "steam, of animals, or any mechanical powers, or by any "combinations of them, and receive tolls and compensation "therefor."

Article 10. "*To regulate* the time and manner in which "passengers and property shall be transported, and *the tolls* "*and compensation to be paid therefor*, but such compensa- "tion for any passenger and his ordinary baggage shall not "exceed three cents per mile, *unless by special act of the* "*legislature*, and shall be subject to alteration as hereinafter "provided."

Section 32. "The legislature may, when any such rail- "road shall be open for use, from time to time alter or reduce "the rates of toll, fare, freight, or other profits upon such "road, *but the same shall not, without the consent of the cor-* "*poration, be so reduced as to produce, with said profits, less* "*than* 15 *per cent. per annum on the capital actually paid in*; "*nor unless on an examination of the amounts received and* "*expended, to be made by the secretary of state, he shall ascer-* "*tain that the net income divided by the company, from all* "*sources, for the year then last passed, shall have exceeded an* "*annual income of* 15 *per cent. upon the capital of the corpor-* "*ation actually paid in.*"

Section 45. "All existing railroad corporations within "this State shall respectively have and possess all the powers "and privileges, and be subject to all the duties and liabilities "and provisions, contained in this Act, so far as they shall "be applicable to their present condition and not inconsistent "with their present charters."

The amendment to plaintiff's charter (June 19th, 1852), is contained in the appendix to the original brief. A portion of the section thereof upon which the controversy turns has already been given as above. There are no other acts of the legislature, public or private, which in plaintiff's view affect the case, except those subsequent to the amendment of plaintiff's charter, which establish new railway corporations, and which refer for their powers and immunities to the above General Act of November 5th, 1849, and thus confer on such corporations the identical rights, and subject to the same limitations, as by its original charter were conferred on plain-

tiff. We subjoin a reference to a few of those Acts passed in 1853, shortly after the amendment of the charter of the plaintiff.

1853.—February 8. Decatur & Indianapolis R. R. Company, Session Laws, page 127.

1853.—February 11. Decatur & Pekin R. R. Company, Session Laws, p. 124.

1853.—February 12. Decatur & Danville R. R. Company, Session Laws, page 93.

1853.—February 12. Waverly & Auburn R. R. Company, Session Laws, page 128.

It may be useful also to refer to a subsequent Act entitled "An Act to amend the charter of the Central Military Tract Railroad Company," passed February 11th, 1853, authorizing the construction of a Branch, and concluding thus: —

"All of the powers, privileges and franchises given and "conferred upon said company in its *original* and amended "charter are hereby given to said company in the construction of said Branch road." . . . Thus making it clear that the previous amendment of June 19th, 1852, was what it purported to be, an amendment of the original charter, and not a repeal thereof, nor the substitution of a new charter founded upon a different policy.

Before discussing the effect of this legislation in determining the peculiar rights of the plaintiff to be derived therefrom, we desire in the first instance to submit to the judgment of the court this general proposition, namely: —

I.

If the words of the clause in the 6th section of plaintiff's amended charter, above quoted, should be found in any railway charter, and constituted the whole power conferred on such railroad company in relation to fixing its rates, with no antecedent special or general legislation affecting or governing its construction, the power thus conferred would by just legal interpretation vest in such railroad com-

pany the absolute, exclusive right to fix its rates free from subsequent legislative control, and free also from the restrictions or duties in regard to rates which by the common law attach to carriers.

We shall hereafter attempt to show, if the above proposition shall fail to meet the concurrence of the Court, yet that, looking to the special antecedent legislation establishing and governing the powers of the plaintiff corporation, this 6th section of the amended charter confers on it the absolute rights above claimed, and that it is capable of no other legal construction.

To maintain this contention it must be shown,—

1st. *That it is within the legislative power of the State, upon public or other considerations, by contract or charter, to confer on a railway corporation such irrevocable powers.*

2d. *That the grant of such powers, couched in the above clear and explicit terms, is incapable, upon the settled principles of construction, of any other just interpretation.*

II.

In reference to the first of these propositions, but little if anything can be added to the discussion contained in our original brief.

It is admitted by plaintiff that among the powers of legislation there are those so essential to the public welfare that they are wholly inalienable, such as the power to raise revenue, the right of eminent domain, the right to provide for the public safety, peace, good order, health and comfort; but it is denied that among these inalienable powers are those which concern only the pecuniary interests of a part, or the whole of its citizens, or of the State. The decisions of this Court that among the legislative powers of a State over corporations or individuals, who devote their property to a use in which the public has an interest, are those of regulation and restraint of the compensation to be

claimed for such use, by no means settle that the exercise of that power is inalienable, nor that it can under no circumstances and for no consideration be parted with by the State by contract. On the contrary, in each of these decisions the powers are in effect declared to be alienable, and that charters may be so framed as to alienate them.

That such powers are among the class of alienable powers is also conclusively shown by the judgments of this Court in the various cases of grant to corporations, and others, of immunity from taxation. If the right of taxation by the State may, by contract, be relinquished, which relinquishment affects the interests of the whole public, it is difficult to see why the power to regulate the tolls of a railway corporation, which affects the interests of those only who may choose to employ such company, may not by contract with the State be relinquished.

We think it may safely be asserted that, in relation to railway corporations *there is no one of the common law limitations which, unless otherwise provided by charter, would govern their rights and liabilities as common carriers which it is beyond legislative power by contract to qualify or abrogate.*

III.

In regard to the 2d proposition, which has reference to the terms in which such grant of powers is expressed, and the principles of construction applicable thereto, it may be proper at the outset to refer to each of the cases in this Court in which clauses in railway charters in relation to their powers to fix rates have been adverted to, and this that we may find if the effect of terms of grant like those above quoted has ever been the subject of adjudication, or whether the principles of law affecting their interpretation or that of similar terms have ever been declared by this Court.

In the case of Winona, &c., *vs.* Blake (94 U. S. R. p. 180) the charter declared the company to be "a common carrier,

with all the rights and subject to all the duties which that name imports." The additions in a subsequent Act of the proviso, that the company shall be bound to carry freight and passengers upon reasonable terms, were held by the Court to add nothing to and take nothing from the grant contained in the original charter.

In Stone *vs.* Wisconsin, &c. (94 U. S. R. p. 181), where the charter authorized the company "to demand and receive "such sum or sums of money for passage and freight of "persons and property as they shall from time to time think "reasonable," counsel for the plaintiff claimed a qualified exemption only, namely, "the right to fix its own rates of "fare, subject only to judicial declaration as to whether they "are reasonable." Such qualified exemption, as will be shown hereafter, it was impossible to deduce from the terms of the grant, and the Court merely remarked, "without ad- "mitting that such would be the effect of this provision, we "shall dispose of the case on another ground."

In Peik *vs.* Chicago, &c., R. R. (U. S. R. 94, p. 165) the charter authorized the Company to "demand and receive "such sum or sums of money for the transportation of per- "sons and property, and for the storage of property, as it "shall deem reasonable." No discussion or adjudication as to the legal effect of such grant was had. The case was declared to fall within the reserved power of the legislature to alter or amend the charter.

The case of the Chicago, &c. R. R. Co. *vs.* Iowa (94, U. S. R. pp. 155, 162,) was one where, as declared by this Court, "the company was organized under the general law "of Iowa, with power to contract, in reference to its business, "the same as individuals, * * subject nevertheless at all "times to such rules and regulations as the General Assem- "bly of Iowa might enact or provide." This the Court declares was the substance of its charter, and of course the case involved no reference to the construction or effect of a grant of power like that under discussion.

The above are believed to be the only cases in this Court in which either the terms or effect of words in a charter conferring any kind of power to fix rates have been referred to, and it is needless to add that they neither adjudicated nor discussed the question as to the construction or effect of a grant in terms like those on which our contention rests.

But although in no case in this Court has the legal effect of terms of grant like those under discussion been subject to adjudication, yet there is a clause, in the judgment of the Court, in Chicago *vs.* Iowa (94 U. S. R., pp. 155, 162), which, although wholly collateral to the question of the cause, would seem to express a general view of the required terms of a grant which should necessarily exclude legislation; and it has been construed, in the dissenting opinion of a member of the Court, in Stone *vs.* Wis. (94 U. S. R., pp. 183, 184), to purport that the compensation to be received should be "specifically designated and permanently fixed in the charter." That clause is as follows: "It was within the power of the com-"pany to call on the legislature to fix permanently this limit "(maximum charge) and make it part of the charter. * * "If that had been done the charter might have presented a "contract as against future legislative interference."

This remark of the Court is, as will be seen, confined to the question of fixing a maximum charge, which clearly could only be affected by exact terms. We think that it could not have been intended to declare that no general words of grant, however clear and explicit, conferring the absolute power to fix rates, would be held effective, unless those rates, or the maximum of those rates, were with precision defined and fixed in the charter.

IV.

Assuming then, as we do, that the question at issue is an open one in this court, we proceed to state the views of

plaintiff in support of the proposition that a grant of powers conferred on a railway company in the terms above stated, where no existing special or general legislation affects its interpretation, confers on such corporation the exclusive and irrevocable right to fix its own rates.

It may be well to reproduce the entire section which this discussion assumes to have been inserted in a charter under the circumstances above stated.

"The said Company shall have power to make, ordain "and establish all such by-laws, rules and regulations as may "be deemed expedient and necessary to fulfil the purpose "and carry into effect the provisions of this Act, and for "the well-ordering, regulating, and securing the effects, busi- "ness, and interests of the Company: provided, that the "same be not repugnant to the constitution and laws of the "United States or of this State, or repugnant to this Act. "The board of directors shall have power to establish such "rates of toll for the convenience of persons and property "upon the same as they shall from time to time by their by- "laws determine, and to levy and collect the same for the "use of said Company. The transportation of persons and "property, width of track, and all other matters and things "respecting the use of said road, shall be in conformity to "such rules and regulations as the said board of directors "shall from time to time determine."

1st. It is submitted that this section is conceived in clear and precise terms, that as applied to the subject matter those terms create no ambiguity and lead to no absurdity, and that "it is not permitted to interpret what has no need of interpretation." "When the law is plain and unambiguous, "whether it be expressed in general or limited terms, the "legislature should be intended to mean what they have "plainly expressed, and consequently no room is left for "construction."— Marshall, C. J., in Fisher *vs.* Blight, 2 Cranch, pp. 358, 399.

That the words of the section are of themselves unam-

biguous, and express clearly and completely a legal design or purpose, is indisputable. So, also, as applied to the subject matter, those words of grant create no ambiguity. The rule of the common law in relation to the right of carriers to fix their rates (reference to which forms a cardinal rule of interpretation of Statutes, Heydon's case, 3. Rep. 7 *b*), must be assumed to have been before the legislature. That rule limited the right to reasonable rates, and subjected the ascertainment of that reasonableness to judicial inquiry. There could then have been no other conceivable purpose of the express grant by the legislature in the above terms on the subject of rates, but to alter that rule of the common law, and thus no ambiguity arises out of the subject matter unless all repeal of the existing law must in all cases be deemed to create an ambiguity.

2d. It cannot be said that, although the terms of the grant are thus clear, yet they import nothing more than a grant of the common law powers of a carrier. To so hold would be to ascribe to the legislature the idle and purposeless enumeration of the rights and powers of carriers. But the language of the grant is wholly inconsistent with such construction. It is not only a grant of "power to *establish* such rates of toll for the conveyance of persons and "property upon the same as they shall from time to time determine,"— but it *grants the power of enforcing the rates thus established*, that is to say, "levy and collect the same "for the use of the Company," without judicial inquiry as to their reasonableness. And further, it declares that all other matters and things respecting the use of the road shall be in conformity to such rules. Now the common law power of carriers is merely to enforce by judicial investigation such rates as are, under all the facts proved, in each case found to be reasonable. Can the words of the grant above stated be held to express merely this power?

3d. If it be conceded, as we think it must be, that the above words of grant of power to fix and collect rates are

not a mere declaration of the common law powers of carriers, but that they in terms confer a special power in that respect on the Company, it need hardly be argued that such power formed part of the contract between the State and the Corporation, and the question of the cause is, whether, *notwithstanding its absolute terms, there is an implied restriction on the exercise of the power*, which restriction may be made effective by future legislation.

It will be admitted, we think, that such implied restriction is repugnant to the clear terms of the grant, and that such implication, if it exists, must be derived from the consideration that the powers thus apparently clearly granted may be abused; a ground that may as well be applicable, perhaps, to each of the other powers granted by the charter, and one which, as furnishing or not a rule for construction, will be adverted to hereafter.

The effect of such supposed implied restriction will be best shown by inserting the same in the section so that it will read thus: "The board of directors shall have power to "establish such rates of toll for the convenience of persons "and property upon the same as they shall from time to time "by their by-laws determine, and levy and collect the same "for the use of the Company, [*but with this restriction, namely "—the Corporation in thus fixing the rates of its tolls, shall "make them reasonable not in its own judgment applied to ex- "isting circumstances, but that the legislature shall have the "power at all times by future legislation to say what rates are "reasonable.*"]

Now such an interpretation would stultify the preceding terms of special grant and make it a mere declaration that the corporation shall have the powers of a common carrier and thus be subject to legislative control, and it would impute to the legislature that to effect such a purpose it resorted to the use of the extended but clear terms contained in the charter, *obviously on their face in complete conflict with such implied restriction*, when a few simple words would have accomplished its object.

biguous, and express clearly and completely a legal design or purpose, is indisputable. So, also, as applied to the subject matter, those words of grant create no ambiguity. The rule of the common law in relation to the right of carriers to fix their rates (reference to which forms a cardinal rule of interpretation of Statutes, Heydon's case, 3. Rep. 7 *b*), must be assumed to have been before the legislature. That rule limited the right to reasonable rates, and subjected the ascertainment of that reasonableness to judicial inquiry. There could then have been no other conceivable purpose of the express grant by the legislature in the above terms on the subject of rates, but to alter that rule of the common law, and thus no ambiguity arises out of the subject matter unless all repeal of the existing law must in all cases be deemed to create an ambiguity.

2d. It cannot be said that, although the terms of the grant are thus clear, yet they import nothing more than a grant of the common law powers of a carrier. To so hold would be to ascribe to the legislature the idle and purposeless enumeration of the rights and powers of carriers. But the language of the grant is wholly inconsistent with such construction. It is not only a grant of "power to *estab-* "*lish* such rates of toll for the conveyance of persons and "property upon the same as they shall from time to time de- "termine,"— but it *grants the power of enforcing the rates thus established*, that is to say, "levy and collect the same "for the use of the Company," without judicial inquiry as to their reasonableness. And further, it declares that all other matters and things respecting the use of the road shall be in conformity to such rules. Now the common law power of carriers is merely to enforce by judicial investigation such rates as are, under all the facts proved, in each case found to be reasonable. Can the words of the grant above stated be held to express merely this power?

3d. If it be conceded, as we think it must be, that the above words of grant of power to fix and collect rates are

not a mere declaration of the common law powers of carriers, but that they in terms confer a special power in that respect on the Company, it need hardly be argued that such power formed part of the contract between the State and the Corporation, and the question of the cause is, whether, *notwithstanding its absolute terms, there is an implied restriction on the exercise of the power*, which restriction may be made effective by future legislation.

It will be admitted, we think, that such implied restriction is repugnant to the clear terms of the grant, and that such implication, if it exists, must be derived from the consideration that the powers thus apparently clearly granted may be abused; a ground that may as well be applicable, perhaps, to each of the other powers granted by the charter, and one which, as furnishing or not a rule for construction, will be adverted to hereafter.

The effect of such supposed implied restriction will be best shown by inserting the same in the section so that it will read thus: "The board of directors shall have power to "establish such rates of toll for the convenience of persons "and property upon the same as they shall from time to time "by their by-laws determine, and levy and collect the same "for the use of the Company, [*but with this restriction, namely "—the Corporation in thus fixing the rates of its tolls, shall "make them reasonable not in its own judgment applied to ex- "isting circumstances, but that the legislature shall have the "power at all times by future legislation to say what rates are "reasonable.*"]

Now such an interpretation would stultify the preceding terms of special grant and make it a mere declaration that the corporation shall have the powers of a common carrier and thus be subject to legislative control, and it would impute to the legislature that to effect such a purpose it resorted to the use of the extended but clear terms contained in the charter, *obviously on their face in complete conflict with such implied restriction*, when a few simple words would have accomplished its object.

If the court might take judicial notice of the leading features of the commerce of the country, it would be found, in relation to all its railways, that the hypothetical fear of extortion has no practical foundation; but that the rates of transportation have been necessarily largely and continually reduced by the operation of the causes above referred to.

6th. The court will, doubtless, be referred to the case of Chicago & Alton Road *vs.* People (67 Ill., p. 1), not for a decision of the question at issue, which was not involved in the cause, but for certain declarations as to the principles of construction, which if sound and applicable to a clear and distinct grant of power to fix rates, it is admitted are of value in this discussion. It should be noted, however, that the same learned court (though differently constituted) were, as has been seen, subsequently unwilling or failed to apply those principles in the present case, nor did it refer to the case itself as one in support of its decision in this cause, perhaps by reason of the distinguishing features of plaintiff's charter, or possibly because of difficulty with the principles of that judgment.

The case referred to involved the single question of the right of a company under a charter, whose terms are not recited in the case, but declared by the court to have "authorized it to establish rates of toll without in terms providing that they shall be free from unjust discrimination," to make such unjust discrimination.

It declared that "the import of that grant, *made, as it was,* "*in broad and general terms*, is nothing more than that the "corporation should have the same right of establishing tolls "that an individual person has when acting as a common "carrier." It further declares that the court availed itself "of an admission by the counsel for the Company "that an "individual person is not allowed to make unreasonable and "excessive charges as a common carrier, *and the artificial person is subject to the same restriction.*"

It then proceeds to lay down as its main proposition that

the reason why an artificial person has no more right to make unreasonable charges than an individual person is, "*that the rule forbidding unreasonable charges was a common* "*law rule when these charters were granted, and the companies* "*accepted their charters with this implied limitation upon* "*the power granted in general terms to establish rates of* "*freight.*"

The foundation therefore of the whole judgment is, that under a charter "*framed in broad and general terms*," like the one then before the Court, all the common law duties and limitations of a carrier attach to the company, *unless a* "*restriction be found in the charter.*"

If the principle intended to be declared was that in all charters (even those in which a clear and absolute power to fix rates is distinctly conferred), all the common law duties, *except those which are thus distinctly made the subject of the charter*, remain unaffected, — such as the duty to carry for all, to deliver, unless prevented by the act of God, &c., and not to make unjust discriminations, — (the right to do which certainly is not involved in the grant of general power to fix rates,) that principle may well be conceded, *but as to each of those common law duties which are the subject of special contract in the charter no such principle can be applicable.*

7th. Upon this question of the construction of grants of power to railways to fix their rates, there are two English cases which contain, or refer to, a suggestion of Baron Alderson (which suggestion he distinctly declares to be an *obiter dictum*) in relation to the construction of an Act affecting the right of the Great Northern Railway Company to fix its charges for the carriage of small parcels, which cases should be referred to. The 13th section of an Act prescribed the tonnage rate for goods. The 14th section provided that for the carriage of small articles, "that is, of any parcel not exceeding 500 pounds, *said companies may demand* any sum which they may think fit." Baron Alderson stated, "I think the compa- "nies are not at liberty to charge what they please, and that

"the word 'reasonable' must be considered as 'introduced "into the statute.'" Upon this question the Chief Baron declared, "that it is not necessary that we should give any judgment," and the other associate judge declared, "that the question upon the 14th section of the Act does not arise." Crouch *vs.* Northern Railway (11 Exchequer, p. 742).

The suggestion thus "thrown out" by Baron Alderson was adverted to in a subsequent case, (Piddington *vs.* S. E. R. R., 5 C. B. N. S., p. 111), where the right in the same terms to charge for the transport of small parcels formed part of the statute; but the Court in that case declined to pass upon its soundness, and it is evident from the argument, and from the reference to another section of the statute, by Willes, Justice (where the word "reasonable" was used), that the suggestion of Baron Alderson had its foundation not in the common law principles of construction but upon the various features of the whole statute under construction.

If this were not the ground of Baron Alderson's suggestion well might his associates hesitate to concur in it. The Act had previously fixed accurately the rates of tonnage to be charged by the company, but it added that for the carriage of small parcels not exceeding 500 pounds weight, "said companies may demand any sum which they may think fit." Now what power did this express grant confer if there were nothing in the other portions of the Act to qualify it? To say that "any sum which they may think fit," means merely "reasonable rates," annihilates the right of the company expressly given to exercise any will or judgment of its own as to *what are* reasonable rates, and leaves that question for judicial inquiry. It thus strikes out of the Act the words "which they may think fit," a proceeding at war with the settled principles of construction, where words are capable of clear meaning and not absolutely inconsistent with the whole Act.

VI.

The contention of plaintiff has thus far been confined to the proposition that a grant in the terms of plaintiff's amended charter, standing alone, unaffected and unqualified by either special or general legislation, must be held in law to confer on a railway company an exclusive power to fix its rates free from legislative control.

We now proceed to place before the court the special legislation which constitutes plaintiff's charter, and to submit that, whether the above contention shall have its sanction or not, this special legislation is incapable of any other interpretation than one which grants to plaintiff the exclusive powers above stated.

1st. The first step must be to find what were the powers as to fixing and determining its rates of compensation conferred on plaintiff by its original charter, and also what, at that period, was the condition of the legislation of the State, and what its declared policy as to conferring on all its railway corporations the power to fix rates; since, if that policy shall be shown to have been clear and uniform, not to have been altered, but continued in full force subsequent to the amendment of plaintiff's charter, it will aid in the interpretation of that amendment.

The powers thus originally conferred on plaintiff, and the policy of the State at that time as to conferring such powers on all its railways to fix and determine rates, will be found to stand thus: Shortly before the period in question, the State, doubtless with a view to invite internal improvements, declared its clear purpose to grant to all existing and all future railway corporations an absolute power to fix their rates free from future legislation or judicial control within certain prescribed limits. Those limits were not based upon the common law doctrine of reasonableness, which leaves open to judicial conflict each transaction, and

thus makes the result dependent upon the circumstances attending such transaction, but *they were based on the principle that the limits therein fixed should afford to such corporations a tempting profit*, namely, — 15 per cent upon the capital invested.

This is shown by the general Act of November 5th, 1849, entitled "An Act to provide for a general system of Railroad "Incorporations," which Act was made applicable to whatsoever charters had already been granted by the State, although in form the Act provided also for the creation of future Railway Corporations by voluntary organization. The sections of that Act of 1849 which grant the power to all companies thus absolutely to fix their rates, and not subject to control until after the prescribed profit should have been attained, have been copied in this brief (p. 3), and the whole Act is to be found in the appendix.

The policy upon which this legislation of the State was founded is believed not to have been, in the early history of railway enterprises, infrequent. In Massachusetts that policy was early established by a general law, by which the profit, an excess of which authorized legislative interposition, was fixed at ten per cent. (Mass. Rev. Statutes, chapter 39, section 83, p. 30, A. D. 1836).

To this system of the State of Illinois, shortly after its establishment, the plaintiff by the terms of its original charter was subjected, and under it by contract the control of its rates, with the above limitation, was conferred on it.

2d. It is thus established beyond controversy that at the outset there was expressly granted to plaintiff a power in derogation of the common law powers of a carrier to fix its rates at its own discretion, subject to no legislation or other control until the profits resulting therefrom should exceed the prescribed limit. This fact has a most important bearing in determining the purpose and construction of the language of the further grant of powers on the same subject, contained in the subsequent amendment of plain-

tiff's charter, namely,—whether that purpose was to continue and enlarge the powers already granted and free from legislative control, or to repeal all those powers and reduce the corporation to the condition of a common carrier.

3d. Within sixteen months after the grant of the plaintiff's original charter, and before its practical working could have been ascertained, the legislature passed the Act in amendment of that charter, which amendment is now to be construed.

4th. As affecting or controlling that construction the plaintiff submits:—

That by the settled presumption of law, as well as by the just inference to be made from the facts disclosed in the Act, that amendatory amendment was granted at the solicitation of plaintiff.

That in its general features the purpose is shown to relieve the Plaintiff Company from some of the restrictions contained in the general Act of 1849, and to confer on it powers not granted by its original charter or by that general law.

That if the purpose of that sixth section was not to repeal and take away existing rights, but to confer power, there could not have been granted to the plaintiff, under these circumstances, any accession of power as to rates beyond those already granted in its original charter, except by the repeal of the reservation therein authorizing legislative interposition whensoever, under the powers already granted, the profits of the company should be found to exceed the prescribed amount.

That the true purpose and construction of the absolute terms of grant contained in this sixth section, and that those terms conferred an exclusive right to fix rates when not accompanied by a reservation, must be deemed to have been settled, as between these parties, by the like terms of absolute grant as to rates contained in the original charter (article 10 of the Act of 1849), to qualify or limit which

thus makes the result dependent upon the circumstances attending such transaction, but *they were based on the principle that the limits therein fixed should afford to such corporations a tempting profit*, namely, — 15 per cent upon the capital invested.

This is shown by the general Act of November 5th, 1849, entitled "An Act to provide for a general system of Railroad "Incorporations," which Act was made applicable to whatsoever charters had already been granted by the State, although in form the Act provided also for the creation of future Railway Corporations by voluntary organization. The sections of that Act of 1849 which grant the power to all companies thus absolutely to fix their rates, and not subject to control until after the prescribed profit should have been attained, have been copied in this brief (p. 3), and the whole Act is to be found in the appendix.

The policy upon which this legislation of the State was founded is believed not to have been, in the early history of railway enterprises, infrequent. In Massachusetts that policy was early established by a general law, by which the profit, an excess of which authorized legislative interposition, was fixed at ten per cent. (Mass. Rev. Statutes, chapter 39, section 83, p. 30, A. D. 1836).

To this system of the State of Illinois, shortly after its establishment, the plaintiff by the terms of its original charter was subjected, and under it by contract the control of its rates, with the above limitation, was conferred on it.

2d. It is thus established beyond controversy that at the outset there was expressly granted to plaintiff a power in derogation of the common law powers of a carrier to fix its rates at its own discretion, subject to no legislation or other control until the profits resulting therefrom should exceed the prescribed limit. This fact has a most important bearing in determining the purpose and construction of the language of the further grant of powers on the same subject, contained in the subsequent amendment of plain-

tiff's charter, namely,—whether that purpose was to continue and enlarge the powers already granted and free from legislative control, or to repeal all those powers and reduce the corporation to the condition of a common carrier.

3d. Within sixteen months after the grant of the plaintiff's original charter, and before its practical working could have been ascertained, the legislature passed the Act in amendment of that charter, which amendment is now to be construed.

4th. As affecting or controlling that construction the plaintiff submits:—

That by the settled presumption of law, as well as by the just inference to be made from the facts disclosed in the Act, that amendatory amendment was granted at the solicitation of plaintiff.

That in its general features the purpose is shown to relieve the Plaintiff Company from some of the restrictions contained in the general Act of 1849, and to confer on it powers not granted by its original charter or by that general law.

That if the purpose of that sixth section was not to repeal and take away existing rights, but to confer power, there could not have been granted to the plaintiff, under these circumstances, any accession of power as to rates beyond those already granted in its original charter, except by the repeal of the reservation therein authorizing legislative interposition whensoever, under the powers already granted, the profits of the company should be found to exceed the prescribed amount.

That the true purpose and construction of the absolute terms of grant contained in this sixth section, and that those terms conferred an exclusive right to fix rates when not accompanied by a reservation, must be deemed to have been settled, as between these parties, by the like terms of absolute grant as to rates contained in the original charter (article 10 of the Act of 1849), to qualify or limit which

thus makes the result dependent upon the circumstances attending such transaction, but *they were based on the principle that the limits therein fixed should afford to such corporations a tempting profit*, namely, — 15 per cent upon the capital invested.

This is shown by the general Act of November 5th, 1849, entitled "An Act to provide for a general system of Railroad "Incorporations," which Act was made applicable to whatsoever charters had already been granted by the State, although in form the Act provided also for the creation of future Railway Corporations by voluntary organization. The sections of that Act of 1849 which grant the power to all companies thus absolutely to fix their rates, and not subject to control until after the prescribed profit should have been attained, have been copied in this brief (p. 3), and the whole Act is to be found in the appendix.

The policy upon which this legislation of the State was founded is believed not to have been, in the early history of railway enterprises, infrequent. In Massachusetts that policy was early established by a general law, by which the profit, an excess of which authorized legislative interposition, was fixed at ten per cent. (Mass. Rev. Statutes, chapter 39, section 83, p. 30, A. D. 1836).

To this system of the State of Illinois, shortly after its establishment, the plaintiff by the terms of its original charter was subjected, and under it by contract the control of its rates, with the above limitation, was conferred on it.

2d. It is thus established beyond controversy that at the outset there was expressly granted to plaintiff a power in derogation of the common law powers of a carrier to fix its rates at its own discretion, subject to no legislation or other control until the profits resulting therefrom should exceed the prescribed limit. This fact has a most important bearing in determining the purpose and construction of the language of the further grant of powers on the same subject, contained in the subsequent amendment of plain-

tiff's charter, namely,— whether that purpose was to continue and enlarge the powers already granted and free from legislative control, or to repeal all those powers and reduce the corporation to the condition of a common carrier.

3d. Within sixteen months after the grant of the plaintiff's original charter, and before its practical working could have been ascertained, the legislature passed the Act in amendment of that charter, which amendment is now to be construed.

4th. As affecting or controlling that construction the plaintiff submits: —

That by the settled presumption of law, as well as by the just inference to be made from the facts disclosed in the Act, that amendment was granted at the solicitation of plaintiff.

That in its general features the purpose is shown to relieve the Plaintiff Company from some of the restrictions contained in the general Act of 1849, and to confer on it powers not granted by its original charter or by that general law.

That if the purpose of that sixth section was not to repeal and take away existing rights, but to confer power, there could not have been granted to the plaintiff, under these circumstances, any accession of power as to rates beyond those already granted in its original charter, except by the repeal of the reservation therein authorizing legislative interposition whensoever, under the powers already granted, the profits of the company should be found to exceed the prescribed amount.

That the true purpose and construction of the absolute terms of grant contained in this sixth section, and that those terms conferred an exclusive right to fix rates when not accompanied by a reservation, must be deemed to have been settled, as between these parties, by the like terms of absolute grant as to rates contained in the original charter (article 10 of the Act of 1849), to qualify or limit which

grant it was by the parties assumed to be necessary to expressly reserve and to insert the right of the legislature to interpose if the result should yield excessive profits.

That any construction of this sixth section which should reduce the plaintiff to the condition of a common law carrier, limited to reasonable rates, instead of to rates determined by it, and, when determined and enforced, *would strip the plaintiff of the rights and immunities conferred by its original charter and leave it to stand alone among the existing and future corporations of* the State, whose powers, like those of plaintiff, were both previously and subsequently defined and established by the same general law of 1849.

That any construction of the section which should hold (after having by its original charter absolved plaintiff from the common law rule) that the purpose of the section was, in any event thereafter, to subject its rates to legisative or other control, would be to ascribe to the section a purpose to effect by implication the repeal of an immunity indisputably conferred in the original charter, by the use of terms which, naturally or literally construed, enlarge or add to that immunity, and this when a few simple words of repeal, if such had been the object, would have completely accomplished that object.

VII.

As to these several propositions we submit:—

1st. By legal presumption, so strong that it fixes an immutable rule of construction of charters, this amendment was made at plaintiff's request and is the work of its own hands. The doctrine in this respect is stated by Chief Justice Taney (in Ohio Life Insurance Company *vs.* Debolt, 16 Howard, 435), and by Chief Justice Shaw (in Commonwealth *vs.* Roxboro', 9 Gray, 492). In the latter case it is thus declared: "As a general rule, from the government to "the subject, the terms of the grant are to be taken more

"strongly against the grantee and in favor of the grantor; "reversing the common rule as between individuals, on the "ground that the grant is supposed to be made at the solici- "tation of the grantee, and the form and the terms of the "particular instrument or grant prepared by him submitted "to the g vernment for its allowance."

And further it is a fair inference, on the face of the original charter and of its amendment, that, not only in legal presumption but in fact, this amendment was the result of an application by plaintiff to the legislature. These show that plaintiff had been chartered only sixteen months before the amendment was made. The amendment itself describes a corporation in which more or less of its stock had been subscribed, and which had accepted the charter and taken up such partial subscription; and that, to enable it to find associates and thus proceed to carry out its charter, some amendment was necessary and was applied for.

Under such circumstances can it be assumed, in the construction of the grant which followed the application of plaintiff for an amendment to its charter, that plaintiff would acquiesce in and accept an amendment which deprived it of an important immunity from legislative control, placed it on the footing of a common carrier, subject to unlimited control of its rates, and thus left it in this respect standing alone (as will be seen hereafter) among the existing and future railroad corporations of the State (whose charters confer the same powers and immunities as those of plaintiff) continuing those corporations in the enjoyment of the same immunity?

2d. Not only is it a just presumption, under such circumstances, that benefits of some kind were sought and granted, but we think that a comparison of the provisions of plaintiff's original charter (Act of 1849) with those of the amendatory Act, will indicate clearly that relief, and not deprivation of existing rights,—increase, and not diminution of the powers of the company,—was the purpose of that amendment. Thus, among other things, it selected the com-

ı out of other incipient voluntary organizations, and
d it at once as a corporation, thus relieving it from
minary conditions of such organization, under Sec-
of the Act of 1849, which would otherwise have
d it. It bestowed gratuitously upon the company
s, waters, materials and privileges belonging to the
ithin its location, for the purpose of its construction.
red the power to enter upon and use other existing
making compensation. It enabled the company to
ıoney upon bonds convertible into stock. It author-
ew branch. In fine, we think we are warranted
that, unless the clause as to rates now under dis-
hall be held to be an exception, no one of the rights
l on the Company are taken away by the Act of
ent; and that where the Act of amendment deals with
subject matter as the original charter, it enlarges
ıes beneficially the provisions of that charter. All these alterations and amendments leave each of the other provisions of the Act of 1849, including the important individual liabilities, still applicable to the duties and obligations of the company and its shareholders.

3d. To interpret those terms as terms of repeal, would impute to the legislature the view that a reiteration of a power already irrevocably granted, in terms more full than those of the original grant, was a proper legislative method abrogating the limitations of that irrevocable grant.

4th. If this sixth section must, as we contend, be construed as a grant of power in relation to rates, then its only possible construction must be that it intended to increase that power, by removing the restriction in its original charter, which declared that in a prescribed contingency the State might interpose on the subject of rates. By the provisions of the original charter the entire power to fix rates had been granted, subject only to a limitation, and that power could not be increased except by the removal of the limitation. Further, the original charter of plaintiff (Act of 1849), on its face, *contemplates a future special applica-*

tion to the legislature by corporations for an enlargement of their powers, so far as concerns the fixing of rates. Thus it declares, that the rates for passengers "shall not exceed three cents per mile, *unless by special Act of the legislature.*"

5th. By a preceding contract between the parties contained in the original charter, the construction intended by them of the terms of absolute grant of power to fix rates contained therein was established, namely: that they conferred, what in terms they purported to do, exclusive power on the subject, and that to qualify their obvious import, if such reservation was desired, an express reservation was necessary. In accepting the amended charter, plaintiff had a right to rely on this former agreed interpretation between the parties, of terms like those in the sixth section, granting on their face an absolute power to fix rates.

6th. Perhaps the strongest, if not conclusive, ground on which the construction of the grant may be rested, is found by resort not merely to its explicit terms and to the considerations above suggested, but to the antecedent and immediately subsequent legislation of the State on the subject of powers to fix acts conferred on all its railway corporations.

The State, as we have seen, had, shortly before the grant of plaintiff's charter, established a general system and policy applicable to its existing and future railway corporations, and under that system plaintiff was, by special Act, incorporated.

By that system the State contracted with each railway that it should have an absolute power to fix its rates, subject to a designated right of the State to intefere when its profits should exceed a prescribed rate.

Within a few months after plaintiff's charter, came the special amendment thereof, and that amendment, so far as relates to fixing rates, can have but one of two constructions. It is to be construed, in relation to the subject of rates, as intended to deprive the plaintiff of the immunity already granted to it in common with the other railways of the State,

and to subject the fixing of its rates to future legislative control, — or it was designed, from public considerations, and having reference to the struggling condition of a public enterprise, to enlarge its powers as to fixing rates by a removal of the subsisting restrictions of that power. We repeat, that so far as the amendatory Act has reference to the fixing of rates, there can be suggested no other construction or purpose than one of the two above named.

The first of these constructions imputes to the legislature, in answer to plaintiff's supplication, the purpose to withdraw the subsisting grant and to reduce plaintiff to the condition and liabilities of a common carrier.

Such a construction singles out the Plaintiff Corporation as an object of adverse legislation; but it indicates no purpose of the State to abandon the general system under which plaintiff was incorporated. In the following year (1853) it went on to create, as we have already seen, several corporations subject to that system, with the right to enjoy the immunity from legislative control which the plaintiff had enjoyed under its charter at the time of the amendment. We submit that in the face of the clear, unambiguous terms of that amendment, granting an unlimited power to fix rates, a construction which would have the results above stated can have no legal warrant.

The other construction, namely, that the terms used in the amendment, and their purpose, was (looking at the public nature of the enterprise) to relieve it from the contingent limitation on its absolute power, and to enable it to make such bargains with its customers as might be agreed, has no verbal difficulties to contend with, none arising from the obscurity of its terms, and none from the surrounding circumstances. The single external objection is that an unrestricted power to fix rates may tend to invite an abuse of that power. We agree that if on the face of a statute, construed literally, abuse and wrong under every circumstance must result, the court might well struggle to find

some construction which would avert the wrong. But it is submitted that the present case is one in which an abuse is not certain, but merely possible, and, as stated by Mr. Justice Bradley (in 21 Wallace), such possibility may well be left to the safeguard of competition, and the regard of the Company to its true interests in the course of its dealing with the public.

VIII.

In conclusion it is proper to advert to the original and to the final grounds on which the learned State court rests its two judgments adverse to plaintiff.

Before doing this, it is to be remarked that it nowhere appears, either in the record nor anywhere in either of those judgments, that the original charter of plaintiff was referred to in the case, nor the fact that the grant of power in controversy was contained in an amendment of that charter, and thus no reference was had to the combined effect of both acts on the construction of plaintiff's grant, so that the special legislation applicable to plaintiff (the result of which we have now placed before the court) was not apparently adverted to by the State court.

In its original judgment the court, after some discussion of the inalienable powers of the legislature, and of the police powers of the State, and a seeming declaration that a grant of power like that claimed by the plaintiff would be "beyond the purpose of establishing a government," its final conclusion is apparently rested on the judgment of this court in C. B. & Q. R. R. Co. *vs.* Iowa. (94 U. S. R. p. 155.)

This was an error. As shown by the report of the case, the plaintiff there had no charter containing terms like those of plaintiff's charter, but was a corporation organized under a general law. This mistake led to the application for a rehearing, which was granted, and the words of plaintiff's amended charter were impliedly admitted by the court to

contain a special contract with the State, of some description, in relation to rates; but the conclusion reached was as follows:—

"And it is but a reasonable construction to hold that there is an implied restriction that this corporation, in fixing the rates of toll, shall make them reasonable, and if so, the general assembly must have the same power to say what is [are] reasonable maximum charges as to do the same thing with individuals engaged in a similar business."

We have, in the earlier part of this brief, discussed the question whether, without regard to the special legislation in plaintiff's case, the law will permit the interpolation of such an implied restriction where the grant is couched in the terms referred to; and we have added, that if under such circumstances such implied restriction could be held to exist, which we deny, yet, looking to the special legislation under which plaintiff holds its rights, such an implication can have no place. We need not, therefore, repeat the argument.

IX.

It has been said that the legislature has clearly the power by general laws to prevent and punish extortion. Extortion, in its common law sense, is a criminal offence. Doubtless the legislature might enlarge the common law definition of that offence, and include in it the exaction by a carrier of rates beyond such defined limits as it should choose to prescribe; but could it by such legislation make the taking of rates which it had by charter authorized a railway company to demand, an offence? For instance, plaintiff's original charter authorized the establishment of rates which should produce, as a maximum, a profit of 15 per cent. upon the capital invested. Could any subsequent legislation, defining and punishing extortion, restrict the right thus granted and subject plaintiff to indictment? Be

this as it may, no such alteration of the common law offence of extortion has been in this case declared by the legislature.

Further, it is said that, for the protection of the public against excessive or unreasonable exactions by railway companies, there must at all times exist a reserved power in the legislature to interpose a limit, or prescribe by general law their rates. This is doubtless true, as settled by this court in Munn *vs.* Illinois, and C. B. & Q. *vs.* Iowa, but with this limitation, declared in that case, namely, that there be nothing in the charter precluding the exercise of such power.

The whole, therefore, of this contention rests upon the question already discussed, of what is the plaintiff's charter?

S. BARTLETT,
WIRT DEXTER, } *for Plaintiff.*

108-526

OFFICE SUPREME COURT U. S.
FILED
FEB 19 1883
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES, ~~Appellant~~ Plaintiff in Error,

v.

THE PEOPLE OF THE STATE OF ILLINOIS, ~~Appellee~~ Defendant in Error.

~~Appeal from~~ Error to the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief of Plaintiff in Error.

SIDNEY BARTLETT,
WIRT DEXTER,
Counsel for ~~Appellant~~ Plaintiff in Error.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

108-576

OFFICE SUPREME COURT U. S.
FILED
FEB 19 1883
JAMES H. McKENNEY, Clerk

IN THE

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES, ~~Appellant~~ Plaintiff in Error,
v.
THE PEOPLE OF THE STATE OF ILLINOIS, ~~Appellee~~ Defendant in Error.

~~Appeal from~~ Error to the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief of Plaintiff in Error

SIDNEY BARTLETT,
WIRT DEXTER,
Counsel for ~~Appellant~~ Plaintiff in Error.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES, ~~Appellant~~ Plaintiff in Error

v.

THE PEOPLE OF THE STATE OF ILLINOIS, ~~Appellee~~ Defendant in Error.

Error to ~~Appeal from~~ the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief. of Plaintiff in Error

AN ACT to provide for a general system of railroad incorporations. Approved November 5, 1849.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than twenty-five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least one thousand dollars for every mile of said road so intended to be built, shall be in good faith subscribed, and ten per cent. paid thereon as herein required, then the said subscribers may elect directors for the said company; thereupon they shall severally subscribe articles

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error ~~Appellant~~,
v.
THE PEOPLE OF THE STATE OF ILLINOIS,
~~Appellee~~
Defendant in Error.

Error to
~~Appeal from~~ the Supreme Court of Illinois.

Appendix to ~~Appellant's~~ Brief. of Plaintiff in Error.

AN ACT to provide for a general system of railroad incorporations. Approved November 5, 1849.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than twenty-five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least one thousand dollars for every mile of said road so intended to be built, shall be in good faith subscribed, and ten per cent. paid thereon as herein required, then the said subscribers may elect directors for the said company; thereupon they shall severally subscribe articles

of association, in which shall be set forth the name of the corporation; the number of years the same is to continue, which shall not exceed fifty years; the amount of the capital stock of the company, which shall be the actual cost of constructing the road, together with the cost for the right of way, motive power, and every other appurtenance for the completion and running of said road, as nearly as can be estimated by competent engineers; the number of shares of which said stock shall consist; the number of shares of which said stock shall consist; the number of directors, and their names, to manage the concerns of the company, who shall not be one-half in the number of the stockholders, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each county into or through which it is intended to pass, and its length, as near as may be, and the names of five commissioners to open books of subscription to the stock. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company. The said articles of association may, on complying with the next section, be filed in the office of secretary of state, and thereupon the persons who have subscribed, and all persons who shall, from time to time, become stockholders in such company, shall be a body corporate, by the name specified in such articles.

§ 2. Such articles of association shall not be filed in the office of the secretary of state until ten per cent. on the amount of the stock subscribed thereto shall have been actually and in good faith paid, in cash, to the directors named in such articles, nor until there is endorsed thereon, or annexed thereto, an affidavit made by at least three of the directors named in such articles, that the amount of stock required by the first section has been subscribed, and that ten per cent. on the amount has actually been paid in.

§ 3. A copy of any articles of association filed in pursuance of this act, with a copy of the affidavit aforesaid endorsed thereon, or annexed thereto, and certified to be a copy by the secretary of this state, or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts therein stated.

§ 4. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding and conveying any real estate and personal property whatever, necessary for the construction of such road, and for the erection of all necessary buildings, yards and appurtenances for the use of the same.

§ 5. The commissioners for opening books of subscription, named in the act of incorporation, shall, from time to time, after the company shall be incorporated, open books of subscription to the capital stock of the company, in such places, and after giving such notice as a majority of them shall direct; which books of subscription shall be kept open until all the capital stock shall be subscribed, if the corporation shall so long exist, and in case a greater amount of stock shall be subscribed than the whole capital of said company, the commissioners shall distribute such capital stock as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any subscriber than such subscriber shall have subscribed for.

§ 6. As soon as practicable, after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners to receive subscriptions thereto shall appoint a time and place for the meeting of the stockholders to choose directors;

such meeting to be held in one of the counties in or through which such railroad is proposed to be constructed, and notice thereof shall be given by said commissioners, by public notice to be published not less than twenty days previous thereto, in the state paper, and a newspaper published in each county through which the said road shall be intended to run, in which a newspaper shall be published. Thirteen directors shall be chosen at such meeting, by ballot, and by a majority of the votes of the stockholders being present in person or by proxy, and every such stockholder being so present at such election, or at any subsequent election of directors, shall be entitled to give one vote for every share of stock which he shall have owned for the thirty days next preceding such election; but no stockholder shall vote at any such election upon any stock except such as he shall have owned for such thirty days. No person shall be a director unless he shall be a stockholder, owning stock absolutely and in his own right, and qualified to vote for directors at the election at which he shall be chosen; and at least seven of the directors shall, at the time of their election, be residents of the counties in or through which the route of such railroad shall run. The directors shall be directors for one year, and until others are elected in their places.

§ 7. The commissioners named in the last preceding section shall be inspectors of the first election of directors, shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them, or a majority of them, in the office of the secretary of state, and in the office of the clerk of each county, or with the cleak of the county commissioners' court (as the case may be) of each county in or through which such railroad shall be proposed to be constructed, and shall also deliver to the treasurer of such company, all money [received] by such commissioners on subscriptions to such capital stock, and all books and papers

108-526

OFFICE SUPREME COURT U.S.
FILED
FEB 27 1883
JAMES H. MCKENNEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES.
Plaintiff in Error,
v.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

JAMES K. EDSALL & JOHN B. HAWLEY,
Counsel for Defendant in Error.

CHICAGO:
THORP, WEST & CO., LEGAL PRINTERS, 111 MADISON STREET,
1882.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D 1882.

NEAL RUGGLES,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

STATEMENT OF CASE.

Neal Ruggles, the plaintiff in error, was a conductor upon a train of passenger cars upon that portion of the line of the Chicago, Burlington and Quincy Railroad which extends through Bureau county in the State of Illinois. Morgan A. Lewis was a passenger upon the train under the charge of Ruggles as conductor, on the 18th of March, 1873, going from Buda to Neponset in Bureau county, a distance of six miles. The fare fixed by the railroad company for that distance was twenty cents. The maximum rate prescribed by the statute of Illinois then in force, was three cents per mile, amounting to eighteen cents for the six miles. Lewis tendered the conductor eighteen cents as his fare, and declined to pay more. The conductor refused to receive the eighteen cents, and demanded twenty cents as such fare. Upon Lewis' refusal to pay the twenty cents the conductor attempted to eject him from the car, and

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1882.

NEAL RUGGLES,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

STATEMENT OF CASE.

Neal Ruggles, the plaintiff in error, was a conductor upon a train of passenger cars upon that portion of the line of the Chicago, Burlington and Quincy Railroad which extends through Bureau county in the State of Illinois. Morgan A. Lewis was a passenger upon the train under the charge of Ruggles as conductor, on the 18th of March, 1873, going from Buda to Neponset in Bureau county, a distance of six miles. The fare fixed by the railroad company for that distance was twenty cents. The maximum rate prescribed by the statute of Illinois then in force, was three cents per mile, amounting to eighteen cents for the six miles. Lewis tendered the conductor eighteen cents as his fare, and declined to pay more. The conductor refused to receive the eighteen cents, and demanded twenty cents as such fare. Upon Lewis' refusal to pay the twenty cents the conductor attempted to eject him from the car, and

seized hold of him for that purpose, but failed in such attempt. For this act Ruggles was prosecuted before a Justice of the Peace of Bureau county, upon a charge of assault and battery upon Lewis, and fined therefor $10 and costs.

From this judgment Ruggles appealed to the Circuit Court of Bureau county, in which court, under the practice of that State, he was entitled to a trial *de novo*.

The cause was submitted to the Circuit Court upon the following

AGREED STATEMENT OF FACTS:

"It is stipulated and agreed by and between the parties to this suit that the same shall be tried by the court without the intervention of a jury, upon the following facts and the law governing the same, to wit:

"On the 7th day of March, A. D. 1873, Morgan A. Lewis, the complaining witness in the cause, got on board the regular mail passenger train of the Chicago, Burlington and Quincy Railroad, at Buda, in the said county of Bureau, to go to Neponset, a station on the line of said railroad, six miles west of Buda; that said train started, and the defendant, Neal Ruggles, who was the regular conductor of said train, demanded of said Lewis a ticket or his regular fare in cash, as established by said railroad company; that said Lewis had no ticket, but immediately tendered to the defendant as such conductor the sum of eighteen (18) cents being three (3) cents per mile from said Buda to Neponset, which the defendant refused to accept, but demanded of said Lewis the sum of twenty (20) cents, which was the regular fare charged by said railroad between said points, and which had been fixed by the board of directors and officers of said railroad company several years prior thereto, and which said sum of twenty (20) cents was charged to and paid by all passengers traveling between said places on said railroad.

"Lewis refused to pay more than eighteen (18) cents, thereupon the defendant stopped his train before it had left the station at Buda, and requested said Lewis to leave the train, which he refused to do, claiming that under the law of the State of Illinois, entitled 'An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State,' approved April 15, 1871, he had a right to go and be carried from said Buda to Neponset for said sum of eighteen (18) cents, when the defendant, denying such right, attempted to remove said Lewis from the cars, and took hold of said Lewis for that purpose, and attempted to force and expel him therefrom (but used no unnecessary force in said attempt), but failed.

"Thereupon said Lewis, after his arrival at Neponset, caused said defendant to be arrested for assault and battery in attempting to remove him (the said Lewis) from the cars, and on the 20th day of March, A. D. 1873, the defendant was tried before Thomas Rhodes, Esq., a Justice of the Peace at Neponset in said Bureau county, and fined $10 and costs, from which judgment the defendant took an appeal to this court.

"And it is further admitted and agreed that said Chicago, Burlington and Quincy Railroad is in and belongs to Class B of the said act entitled 'An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State,' approved April 15, 1871, and in force July 1, 1871. And it is further admitted that the ticket office at Buda was not open so that said Lewis could purchase a ticket thereat, and that the said Lewis was an adult person, aged about 40 years.

"Now, if the court shall find and be of opinion that the act last aforesaid was a valid and constitutional law in the matter of fixing, limiting or controlling the rates of fare to be charged by said railroad, and that said Chicago, Burlington and Quincy Railroad Company was bound to obey the same notwithstanding the provisions of its charter, the judgment of the Justice of the Peace should be affirmed

with costs; but if said court shall find and be of the opinion that as to said Chicago, Burlington and Quincy Railroad in the said matter of fixing, limiting or controlling its rate of passenger fare the said act is invalid and unconstitutional, then the defendant shall be acquitted and discharged.

"It is further agreed that if, upon the foregoing facts, the court shall find and adjudge the defendant to be guilty of said assault and battery, then this agreement shall stand in lieu of and shall be taken and regarded as a bill of exceptions in this cause, and as embodying all of the evidence herein, and a motion for a new trial shall be regarded as having been made by the defendant and formally overruled by the court, and the defendant shall have leave to appeal said cause to the Supreme Court of Illinois by filing a bond in the office of the clerk of this court in the penal sum of $200, with Hiram Bigelow as surety, within twenty days from and after the rendition of the judgment by this court."

Printed Record, p. 5.

The Circuit Court rendered judgment against Ruggles for $10 and costs of prosecutions, December 15, 1873. *Ib.*, p. 7.

From this judgment the defendant below prosecuted an appeal to the Supreme Court of the State of Illinois (*Ib.*, p. 8), having excepted to the decision of the Circuit Court as appears from his bill of exceptions embodying the statement of facts upon which the case was submitted. *Ib.*, p. 9.

The cause was argued in the Supreme Court of the State at the September term, 1874, and taken under advisement. *Ib.*, p. 12.

On the 22d of February, 1879, the opinion of that court was filed in the cause, finding that there was no error in the record, and directing that the judgment of the Circuit

Court be affirmed, and thereupon such judgment of affirmance was accordingly entered. *Ib.*, pp. 12–15.

A petition for re-hearing was filed by the appellant in the Supreme Court of the State, and overruled by that court, and an additional opinion was filed. *Ib.*, pp. 15–17.

From the final judgment of the Supreme Court of the State said Ruggles prosecuted the pending writ of error, upon the ground as claimed that the act of the General Assembly of the State of Illinois, of April 15, 1871, entitled "An act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads in this State," impaired the obligation of the contract contained in the charters, or special acts of incorporation, of the various companies which were merged into the Chicago, Burlington and Quincy Railroad Company by consolidation, and was therefore unconstitutional and void.

Said act of April 15, 1871, contains the following:

"SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that all railroad corporations organized or doing business in this State under the laws or authority thereof, shall be limited to the rates of compensation for the transportation of passengers which are herein prescribed.

"SEC. 2. All railroads in this State shall be classified according to the gross amount of their respective annual earnings per mile, as follows:

"Class A shall include all railroads whose gross annual earnings per mile shall be ten thousand dollars or more. Class B shall include all railroads whose gross annual earnings per mile shall be eight thousand dollars or any sum in excess thereof less than ten thousand dollars. Class C shall include all railroads whose gross annual earnings per mile shall be four thousand dollars or any sum in excess thereof less than eight thousand dollars. Class D shall in-

clude all railroads whose gross annual earnings per mile shall be any sum less than four thousand dollars.

"SEC. 3. All railroad companies, according to their classification as herein prescribed, shall be limited to compensation, per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: Class A, two and one-half cents; Class B, three cents; Class C, four cents; Class D, five and one-half cents. "Provided, that no such corporation shall charge, demand or receive any greater compensation per mile for the transportation of children, twelve years of age or under, than half the rates above prescribed And provided, also, a charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train.

"SEC. 4. All railroad corporations shall keep posted in a conspicuous place in their depots, a printed copy of this act, with a table of distances between each and every station of their road, and a statement showing the class to which its road belongs."

Laws of Ill. of 1871–2, p. 640.

It appears from the statement of facts that the Chicago, Burlington and Quincy Railroad Company is a corporation formed under the laws of Illinois, and that it is composed of the Aurora Branch Railroad, the Central Military Tract Railroad, the Peoria and Oquawka Railroad, and the Northern Cross Railroad, duly consolidated by virtue of an act of the General Assembly of the State of Illinois, entitled "An act to enable railroad and plank-road companies to consolidate their stock," approved Feb. 28th, 1854.

This clause of the stipulation was probably designed to bring before the court and make part of the record, such

portions of the special acts of the legislature of Illinois as incorporated certain railroad companies under names corresponding with the names of the railroads said to have been consolidated.

Assuming that it is sufficient for that purpose, it is necessary to notice such portions of these acts as bear upon the right of the consolidated railroad company to collect tolls or fares for the transportation of passengers, including such provisions as indicate what parts of the line were authorized to be built by each of the constituent companies, respectively.

1. *As to the Aurora Branch Railroad Company.*

"An Act granting a charter to the Aurora Branch Railroad Company," approved Feb. 12th, 1849, contained the following provisions:

"SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that all such persons as shall become stockholders agreeably to the provisions of this act in the corporation hereby created, shall be, and for a term of seventy years from and after the passage of this act shall continue to be a body corporate and politic by the name of the 'Aurora Branch Railroad Company,' and by that name shall have succession for the term of years above specified; may sue and be sued, complain and defend, in any court of law or equity; may make and use a common seal and alter the same at pleasure; may make by-laws, rules, and regulations for the management of property, the regulation of its affairs and for the transfer of its stock, not inconsistent with the existing laws and constitution of this State and of the United States. * * * * * *

"SEC. 2. The said corporation shall have the right, and during its continuance, to maintain and continue a railroad with a single or double track, and with such appendages as may be deemed necessary for the convenient use of

the same, from the town of Aurora, in the county of Kane, to some eligible and convenient point in the county of Du Page, there to connect with the Galena and Chicago Union Railroad.

"SEC. 6. The said corporation is authorized to contract, make and use a single or double railroad or way, of suitable width and dimensions, to be determined by the said corporation on the line, course or way which may be designated and selected by the directors as the line, course or way whereon to construct and make the same; and shall have power to regulate the time and manner in which goods, effects and passengers shall be transported, taken and carried on the same, and to prescribe the manner in which the said railroad shall be used, by what force the carriages to be used thereon may be propelled, and the rate of toll for transportation of persons or property thereon, as may be deemed suitable for their interests."

Private Laws of 1849, pp. 96–98.

This act only authorizes the construction of a short branch line from Aurora, in Kane county, northerly to a point on the old Galena and Chicago Union Railroad in Du Page county, a distance of ten or fifteen miles, most of which was long since abandoned, and it in fact forms no part of the main line of the present Chicago, Burlington and Quincy Railroad.

Private Laws of Ill., 1865, vol. 2, p. 15.

"An Act to amend the charter of the Aurora Branch Railroad Company," approved June 22d, 1852. By the first section of this act the Aurora Branch Railroad Company was authorized to extend its road south-westerly from Aurora in Kane county to a point in La Salle county fifteen miles north from the town of La Salle, (i. e., to Mendota). The second section changes the name of the company to that of "Chicago and Aurora Railroad Company."

Laws of Illinois of 1852, p. 170.

An act to amend the charter of the "Chicago and Aurora Railroad Company," approved Feb. 28, 1854, contains the following:

"SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that the said Chicago and Aurora Railroad Company be and is hereby authorized to construct a branch from its main line from the village of Aurora in Kane county to and into the city of Chicago by way of the village of Naperville, and acquire and hold depot and station ground, and such other lands as may be required for the business of the company in said city, and for such purposes may acquire the title to such lands by voluntary purchases, or under the existing laws in such case made and provided.

"SEC. 2. The name of said company shall be changed to that of the Chicago and Southwestern Railroad Company."

Laws of Illinois of 1854, p. 143.

The name of this company was changed to "Chicago, Burlington and Quincy Railroad Company" by an act approved Feb. 14th, 1855.

Private Laws of Illinois of 1855, p. 287.

The following act was passed and approved Feb. 15, 1865, to wit: "An Act to authorize the Chicago, Burlington and Quincy Railroad Company to take up that portion of its road between Batavia in Kane county and the junction in Du Page county, and to extend its railroad from such point in the town of Batavia on its present line to a point that they may select on the line of the Northwestern (late the Galena and Chicago Union) Railroad, in Kane county, Illinois."

"SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that the Chicago, Burlington and Quincy Railroad Company shall

have power and is hereby authorized to take up and discontinue that part of its railroad lying between Batavia in Kane county and the junction with the Chicago and Northwestern (late the Galena and Chicago Union) Railroad in Du Page county. Provided, it shall at the same time or immediately thereafter, which it is hereby empowered to do, extend, construct and maintain its railroad from such point on the present line, in the town of Batavia, as it may select, northwardly via St. Charles to a point on the Chicago and Northwestern (late Galena and Chicago Union) Railroad, at such place in the county of Kane east of Fox river as said company may determine upon, not further north than the junction of the Fox River Valley road, so called, with the said Galena and Chicago Union Railroad, late so called.

"SEC. 2. The said Chicago, Burlington and Quincy Railroad, in the extension of its said railroad, and in the construction, operation and maintenance of such extension, shall have, possess and exercise all the powers, rights, privileges, immunities and franchises now or at any time possessed, held or enjoyed by it, during its existence under its charter, or amendments thereto, or by or under the laws of this State.

"SEC. 3. This act shall be deemed a public act, and shall take effect and be in force from and after its passage.

"SEC. 4. The right to regulate the tariff for transporting freight and passengers on so much of said road as is by this act relaid, is expressly reserved to the general assembly."

2. Private Laws of Ill. of 1865, p. 145.

It is apparent that Sections 2 and 4 of the act last cited, relate exclusively to the portion of the road thereby authorized to be taken up and discontinued, and the extension or new track authorized to be re-laid in place thereof; and as we understand there is no provision in any of the various acts similar to Sec. 2 of the act of

Feb. 15, *supra*, extending the powers, privileges, immunities and franchises conferred upon the company in respect to the original Aurora Branch road, to the extensions of the road from Aurora to Mendota, a point fifteen miles north of La Salle, and also from Aurora to Chicago. The acts of June 22, 1852, and Feb. 28, 1854, (*ante* pp. 8, 9,), which authorize these extensions, contain no such provision. The only authority the company had to collect tolls, fares or freights upon either of these two extensions, which embraces the line from Chicago to Mendota, was such as existed by mere implication.

2. *As to the Peoria and Oquawka Railroad Company.*

The first and second sections of "An act to incorporate the Peoria and Oquawka Railroad Company," approved Feb. 12, 1849, contain the following provisions:

"SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that all such persons as shall become stockholders agreeably to the provisions of this act, in the corporation hereby created, shall be and are hereby constituted and declared a body corporate and politic by the name of the 'Peoria and Oquawka Railroad Company,' and by that name shall have succession for the term of fifty years from and after the passage of this act, and may by said name sue and be sued, complain and defend in any court of law or equity, may have and use a common seal and alter or renew the same at pleasure; may make by-laws, *rules and regulations* for the management of its property, the regulation of its affairs and for the transfer of its stock, *not inconsistent with the laws and constitution of this State and of the United States.*

"SEC. 2. The said corporation shall have the right to survey, locate and construct, and during its continuance to maintain and continue a railroad with single or double track

and with such appendages as may be deemed necessary for the convenient use of the same, from the town of Peoria on the Illinois river, in the county of Peoria, to the town of Oquawka on the Mississippi river, in the county of Henderson, and to locate and construct the same on such line, course or way as may be designated and selected by the directors of said corporation, whereon to construct and make the same; and may also prescribe the manner in which said railroad shall be used, by what force the carriages to be used thereon may be propelled, *to regulate* the time and manner in which goods, effects and passengers may be transported and carried on the same, *and the rates of toll on the transportation of persons or property thereon;* and it shall also be lawful for the said corporation to unite with any other railroad company already incorporated or which may be incorporated upon such terms and at such points and parts of the said railroads as may be agreed upon by the directors of said companies, and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient, under the same privileges and restrictions as are herein contained."

Private Laws of 1849, p. 99.

3. *As to the Northern Cross Railroad.*

It appears that the construction of this road was commenced by the State.

Laws of Illinois, 1841, pp. 194–199.

Laws of Illinois, 1845, p. 103.

"An act to incorporate the Northern Cross Railroad Company," approved Feb. 10th, 1849, by its first section authorized the formation of a corporation under the name "Northern Cross Railroad Company."

"SEC. 2. Said company are hereby authorized and empowered to locate, construct, establish and finally complete and hereafter use a railroad commencing at any con-

venient point on the west bank of the Illinois river opposite the town of Meredosia, and running from thence on the most eligible, beneficial, expedient and practicable route to the Mississippi river at the city of Quincy in the county of Adams. * * * * * *

"SEC. 6. The said company hereby incorporated shall have, enjoy and exercise all and singular the powers, rights, authorities, privileges and immunities conferred upon the Alton and Sangamon Railroad Company, by the act incorporating the same described in the fifth section of this act as 'An act to construct a railroad from Alton in Madison county to Springfield in Sangamon county,' approved Feb. 27th, 1847, and not contrary to the provisions of this act, and all privileges, powers and immunities in any manner conferred upon the Alton and Sangamon Railroad Company by the said act incorporating the same and beneficial to the corporation hereby created, shall apply to the Northern Cross Railroad Company, the same as herein specially recited and granted to said last named company, to all intents and purposes, and in every manner of thing, powers, privilege, or authority, whatever."

Private Laws of 1849, p. 82.

"An act to construct a railroad from Alton in Madison county to Springfield in Sangamon county," approved Feb. 27, 1847, referred to above, contains the following:

"SEC. 8. The said corporation may take and transport upon said railroad any person or persons, merchandise or other property, by the force and power of steam or animals or any combination of them, and may fix, establish, take and receive such rates of toll for all passengers and property transported upon the same as the said directors shall from time to time establish, and the directors are hereby authorized and empowered to make all necessary rules, by laws and regulations that they may deem necessary and expedient to accomplish the designs and purposes and to carry into effect the provisions of this act, and for the trans-

fer and assignment of its stock which is hereby declared personal property, and transfer all in such manner as may be provided in the by-laws and ordinances of the corporation."

Private Laws of 1847, p. 146.

Neither the Northern Cross nor the Peoria and Oquawka Railroad Company was authorized by its charter to build that portion of the consolidated road which extends through Bureau county.

4. *As to the Central Military Tract Railroad.*

"An act to incorporate the Central Military Tract Railroad Company," approved Feb. 15, 1851.

The first section of this act provides for the incorporation of a company under the name "Central Military Tract Railroad Company." The act also contains the following:

"SEC. 2. The said corporation are hereby authorized and empowered to construct, establish, hold and use a railroad commencing at Galesburg in the county of Knox and running from thence in a north-easterly direction, on the most direct and eligible route to, and to connect with the Rock Island and La Salle Railroad, at such point in the county of Henry or Bureau as the said company hereby incorporated may designate.

"SEC. 3. The said company is hereby created and incorporated for the purpose of organizing under an act entitled 'An act to provide for a general system of railroad incorporations,' in force Nov. 5th, 1849, and in all things shall be governed by the provisions thereof, and shall be entitled to have and exercise the powers and privileges and be subject to the liabilities therein enumerated."

Private Laws of Ill. of 1851, p. 191.

The general law of the State referred to, entitled "An act to provide for a general system of railroad incorporations,"

approved Nov. 5, 1849, will be found in Public Laws of Ill. of 1849, p. 18; Gross' Statutes of Ill. (Ed. of 1869), p. 541; Scates' Comp. Statutes of Ill., p. 937.

This act contains the following provisions:

"SEC. 21. Every such corporation shall possess the general powers and be subject to the general liabilities and restrictions expressed in the special powers following, that is to say * * * 10th. To regulate the time and manner in which passengers and property shall be transported and the tolls and compensations to be paid therefor; *but said compensation for any passenger and his ordinary baggage shall not exceed three cents a mile*, unless by special act of the legislature, and shall be subject to alteration as hereinafter provided. * *

"SEC. 28. Every such corporation shall make an annual report to the Secretary of this State of the operations of the year ending on the first day of January, which report shall be verified by the oaths of the treasurer and the acting superintendent of operations, and filed in his office by the twentieth day of January in each year, and shall state the capital stock and the amount actually paid in; the amount expended for the purchase of lands for the construction of the road, for buildings, and for engines, and for cars, respectively; the amount and nature of its indebtedness, and the amounts due the corporation; the amount received for the transportation of passengers, of property, of the mails, and from other sources; the amount of freight, specifying the quantity in tons, of the products of the forests, of animals, of vegetable food, other agricultural products, manufactures, merchandise and other articles; the amount paid for repairs, engines, cars, buildings, and salaries; the number and amount of dividends, and when paid; the number of engine-houses and shops, of engines and cars, and their character; the number of miles run by passenger, freight and other trains respectively; the number of men employed, and their occupation; the number of persons injured in life or limb, and the causes

of such injury; whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation. * * *

"SEC. 32. The legislature may, when any such rail road shall be opened for use, from time to time alter or reduce the rates of toll, fare, freight or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than fifteen per cent. per annum on the capital actually paid in; nor unless on an examination of the amounts received and expended, to be made by the Secretary of State, he shall ascertain that this net income derived by the company from all sources for the year then last past shall have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in.

"SEC. 45. All existing railroad corporations within this State shall respectively have and possess all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act, so far as they shall be applicable to their present conditions and not inconsistent with their several charters; and all railroad companies that are now constructing their roads may acquire title to lands necessary for that purpose under the provisions of this act."

An act to amend an act entitled "An act to incorporate the Central Military Tract Railroad Company," was passed and approved June 19, 1852, containing among other sections the following:

"SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad with one or more tracks from the town of Galesburg in the county of Knox, in a north-easterly direction, on the most direct and eligible route towards the city of Chicago, to a point to be designated by the said company, on or near the line of the Chi-

cago and Rock Island Railroad, or on or near the line of any other railroad or railroads connecting with or extending to the said city of Chicago, with a branch of the same to the town of Henderson in the county of Knox.

"SEC. 6. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business and interest of the company. Provided, that the same be not repugnant to the constitution and laws of the United States or of this State, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time, by their by-laws, determine, and to levy and collect the same for the use of the said company. The transportation of persons and property, the width of track, and all other matters and things respecting the use of said road, shall be in conformity to such rules and regulations as the said board of directors shall from time to time determine."

Laws of Ill. of 1852, pp. 36, 39.

5. *As to the consolidation.*

"An act to enable railroad companies and plank-road companies to consolidate their stock," approved Feb. 28, 1854, contains the following:

"SEC. 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, that all railroad companies and plank-road companies now organized, or hereafter to be organized, which now have or hereafter may have their termini fixed by law, whenever their said road or roads intersect by continuous lines, be and the same are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this State whenever their lines connect with the lines of such companies out of this State.

"SEC. 2. Such consolidation may take place whenever the said companies shall respectively agree upon the terms and conditions of the same; and the said companies when so consolidated shall be authorized to agree upon the name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic, shall have a common seal or seals, and by such name or names shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, *and shall have all the powers, franchises and immunities which the said respective companies shall have by virtue of their respective charters*, before such consolidation passed, within the State of Illinois." * * * * * *

Laws of Ill. of 1854, p. 9.

Gross' Stat. of Ill. (Ed. of 1869), p. 537.

The general question sought to be raised upon this record is whether by the enactment of these several special acts of incorporation, under which the corporations were organized which formed the Chicago, Burlington and Quincy Railroad Company by consolidation, the General Assembly of the State of Illinois entered into a valid contract whereby its successors were deprived, for all future time, of power to pass laws prescribing reasonable maximum rates for the transportation of passengers upon such railroad, and particularly upon that portion of the line extending from Buda to Neponset, in Bureau county.

BRIEF FOR DEFENDANT IN ERROR.

I.

The State has never bound itself by contract that no law should be passed prescribing reasonable maximum rates for the transportation of passengers or freight upon this railroad.

(1.) All public grants are strictly construed. Nothing can be taken against the State by presumption or inference in a case like this, where the immunity claimed calls for an abridgment of the powers of government, or any restraint upon their exercise.

The Del. Railroad Tax, 18 Wall., pp. 206, 225.

Charles Riv. Bridge v. *Warren Bridge*, 11 Pet., 420, 546.

Providence Bank v. *Billings*, 4 Pet., p. 514.

United States v. *Arredondo*, 6 Pet., p 738.

Camden & Amboy R. R. Co. v. *Briggs*, 2 Zab., p. 623.

Sedgewick's Stat. and Const. Law, p. 595.

Ohio Life Ins. & Trust Co. v. *Debolt*, 16 How, 416, 435.

Easton Bank v. *Com.*, 10 Penn. St., pp. 442, 451.

(2.) Applying this rule of construction to the provisions contained in the various acts of incorporation of the constituent companies now forming the consolidated company for which the plaintiff in error acted as conductor, there is nothing contained in any of them which can be construed into a contract on the part of the State, that it will not exercise from time to time its proper powers of government, and prescribe by law reasonable maximum rates for the transportation of passengers and freight upon this railroad.

The affirmative declaration contained in some of the

special charters, that the corporation may fix its rates, does not imply a negative provision that reasonable maximum rates shall not be prescribed by law. *Ibid.*

The Delaware R. R. Tax, 18 Wall., pp. 217, 224.

(3.) On the contrary, the power of the company to fix rates has annexed thereto the implied condition that such rates must be reasonable.

1 Hargrave's Law Tracts, Pt. 2, Chap. 6, p. 77.
Hutchinson on Carriers, § 447.
Chicago & Alton R. R. Co. v. *The People*, 67 Ill., 11, 16.
Crouch v. *The Great N. W. Ry. Co.*, 11 Excheq., 712.
Piddington v. *S. E. Ry. Co.*, 94 Eng. Com. Law, 111, 118.
Allnut v. *Inglis*, 12 East., pp. 527, 538.
Winona & St. Peter R. R. Co. v. *Blake*, 94 U. S., p. 180.
Ill. Cent. R. R. Co. v. *The People*, 95 Ill., p. 313.
Ruggles v. *The People*, 91 Ill., pp. 256, 265.

(4.) The power to determine what maximum rates are reasonable is a proper legislative function, and such rates may be prescribed by law.

Munn v. *Illinois*, 94 U. S., 133.
Peik v. *C. & N. W. Ry. Co.*, 94 U. S., 165, 178.
Winona & St. Peter R. R. Co. v. *Blake*, 94 U. S., 180.

(5.) The court will take judicial notice of the division of the State into counties, and their relative positions in the State.

Ross v. *Reddick*, 1 Scam., 73.
Dickinson v. *Breeden*, 30 Ill., 279, 322.

It will thus appear that the portion of the line of road which extends through Bureau county must have been built under the charter of the Central Military Tract Railroad Company, which adopted the general railroad law of the State of Nov. 5, 1849. (*Ante* p. 15.)

2 Scates' Comp. Stat. of Ill., p. 937, § § 21, 32.
Gross' Stat. of Ill. (Ed. of 1869), p. 541, § § 21, 32.

See 4 Coke's Inst. p. 220 & 4 Bacon's Abridgment p. 158. cited post p. 70.

By that law the fares for passengers were limited to an amount not exceeding three cents per mile, the same maximum rate fixed by the act of April 15, 1871.

And the 6th section of the act of June 19, 1852, to amend the charter of this company (*ante* p. 17), requires the by-laws prescribing the rates of toll, fares, etc., to "be not repugnant to the laws and constitutions of the United States, *or of this State.*"

II.

The enactment of Laws prescribing maximum rates of charges for the transportation of persons and property upon Railroads, and thus to prevent extortion, is a legitimate exercise of the Police Powers of the State.

Railroads are improved public highways, and subserve such public uses that the sovereign powers of eminent domain and taxation may be exercised to lay out and construct them.

Olcott v. *The Supervisors*, 16 Wall., 678, 696.

Loan Association v. *Topeka*, 20 Wall., 655.

Railroad Com'rs v. *Portland, &c., R. R. Co.*, 63Me., 269.

The power to prescribe maximum rates for warehousemen is held to pertain to the police powers of the State.

Munn v. *Illinois*, 94 U. S., 125.

The power to enact laws fixing maximum rates, to prevent extortion by railroad corporations, is embraced within the limits of any admissible definition of the police powers of the government.

Railroad Co. v. *Fuller*, 17 Wall., 560, 570.

Cooley on Constitutional Limitations, 572.

Commonwealth v. *Alger*, 7 Cushing, 84.

License Cases, 5 Howard, 583.

O. & M. R. R. Co. v. *McClelland*, 25 Ill., 144.

Hudson County v. *The State*, 4 Zab., 718, 728.

Com. v. *Intoxicating Liquors*, 115 Mass., 153.

Com. v. *Hamilton Mfg. Co.*, 120 Mass., 383.

People v. *Boston & Albany R. R. Co.*, 70 N.Y., p. 570.

Extortion is a Common Law offense, and may be committed by other persons than public officers, *e. g.*, by those having control of property taken for public use, and who occupy such a position that the public must of necessity deal with them.

2 Bishop's Crim. Law (5th Ed.), § 394.

Rex v. *Burdett*, 1 Lord Raymond, 148.

Rex v. *Roberts*, 4 Mod., 101.

1 Russell on Crimes, 143.

Laws to prevent such extortion are essential to the preservation of good order, and to protect the people from oppressive exactions.

Railroad Co. v. *Lockwood*, 17 Wall., 357, 379.

III.

The Police or Governmental Powers of the State are inalienable, and cannot be sold or parted with by contract.

The sovereign powers of government constitute a trust to be exercised by the representatives of the people, and not a commodity to be sold.

All rights are held subject to the police power of the State.

Stone v. *Mississippi*, 101 U. S., 814.

Beer Company v. *Massachusetts*, 97 U. S., 25, 32.

Boyd v. *Alabama*, 94 U. S., 645, 650.

The Delaware Railroad Tax, 18 Wall., 226.

Com. v. *Intoxicating Liquors*, 115 Mass., 153.

Cooley's Const. Lim. (1st Ed.), 282, 283.

The power of the State to govern artificial persons is no less ample than it is respecting natural persons. No State Legislature has authority to abdicate, or permanently surrender the powers of government respecting either.

ARGUMENT FOR THE STATE.

The argument of counsel for the plaintiff in error rests upon the assumption that the General Assembly of the State of Illinois had, prior to the act of April 15, 1871, entitled "An Act to establish a reasonable maximum rate of charges for the transportation of passengers on railroads within this State," entered into a valid contract with the Chicago, Burlington and Quincy Railroad Company whereby the State had bound itself not to enact any law prescribing reasonable maximum rates of charges for the transportation of passengers upon that railroad.

We deny this proposition upon two general grounds, viz:

First. That if it was competent for the General Assembly to make such a contract, there is nothing contained in the special charters of the various corporations which by consolidation formed the Chicago, Burlington and Quincy Railroad Company, that can properly be construed as a contract that the State will not from time to time, as the exigencies of the case may require, pass such laws as may be deemed necessary to prevent extortionate charges, and protect the rights of the public in the use of this road.

Second. That it is not within the competency of the Legislature of a State to make a contract whereby itself and its successors are deprived of power to enact laws of this nature.

I.

The Charters of the several Corporations which by consolidation formed the Chicago, Burlington and Quincy Railroad Company contain no provision to the effect that the State shall not pass laws prescribing reasonable maximum rates for this road, and such restraint upon the legislative power of the State cannot be implied.

1. Such portions of these special acts as show the particular line of road authorized to be built by each of the constituent companies which, as appears from the stipulation, subsequently formed the consolidated company, together with such provisions as are respectively contained therein relative to the regulation of the rates of toll, fares or freight upon such lines of road, are quoted in our statement of the case. (*Ante* pp. 7–17.)

The strongest or most favorable provision for the plaintiff in error, contained in any of these special acts, is the grant of authority to the railroad corporation to prescribe rates of toll, fares or freight for the transportation of persons or property and to collect the same for the use of the company.

None of these acts specify what the rates of fare or freight shall be (except the general law of 1849, which will be noticed further on); nor do they contain any express stipulation or provision to the effect that the State shall not prescribe reasonable maximum rates, or any other provision which by its terms purports to restrain the State in the exercise of its proper legislative powers in that regard. If any such restraint upon the State is found in these charters, it must be by construction, implication or presumption, and not in any express provision.

Inasmuch as there are so many of these special acts relating to different portions of the line of the consolidated

company, it may somewhat narrow the range of discussion if we can ascertain which of them relates to the portion of the line extending from Buda to Neponset, in Bureau county. It was between these points that Lewis proposed to ride when the plaintiff in error attempted to eject him from the cars. The counties of the State are organized, and their boundaries and relative geographical positions established by public laws, of which the court will take judicial notice.

Ross v. *Reddick*, 1 Scam., 73.

Dickinson v. *Breeden*, 30 Ill., 279.

It will thus appear that the lines of road authorized to be built by the Aurora Branch, the Peoria and Oquawka, and the Northern Cross Railroad companies, could not have extended through Bureau county.

The act to incorporate the "Central Military Tract Railroad Company" conferred authority on that company "to construct, establish, hold and use a railroad commencing at Galesburg, in the county of Knox, and running from thence in a north-easterly direction on the most direct and eligible route to, and to connect with, the Rock Island and La Salle Railroad, at such point in the county of Henry or Bureau as the said company hereby incorporated may designate."

Private Laws Ill. of 1851, p. 191.

By this act the road was authorized to be built to a point within the limits of Bureau county.

The second section of the amendatory act of June 19, 1852, authorizes that company to construct a railroad "from the town of Galesburg in the county of Knox, in a north-easterly direction, on the most eligibly route toward the city of Chicago, to a point to be designated by said

company, on or near the line of the Chicago and Rock Island Railroad, or on or near any other railroad or railroads connecting with or extending to the city of Chicago." (*Ante* p. 16.)

By virtue of this act the company was clearly authorized to build and operate that portion of its line extending through Bureau county, and as we understand did accordingly extend its line north-easterly to Mendota in La Salle county, where it connects with the line authorized to be built under the amended charter of the Aurora Branch road.

The law of 1854, in pursuance of which the consolidated company was formed, provided that the consolidated company "shall have all the powers, franchises and immunities which the said *respective* companies shall have by virtue of their *respective* charters before consolidation."

Gross' Stat. of Ill. (Ed. of 1869), p. 538.

By virtue of this statute the powers and authority of the consolidated company over any portion of its line, can be no greater than the constituent company owning that portion of the road before consolidation, possessed in regard thereto.

P. W. & B. R. R. Co. v. *Maryland*, 10 How, 376.

The Delaware Railroad Tax, 18 Wall., 207, 227.

The Central Military Tract Railroad Company was formed under the special act of Feb. 15, 1851, which by express provision declares that: "The said company is hereby created and incorporated for the purpose of organizing under an act entitled 'An act to provide for a general system of railroad incorporations,' in force Nov. 5, 1849, and in all things shall be governed by the provisions thereof, and shall be entitled to have and exercise the powers

and privileges and be subject to the liabilities therein enumerated." (*Ante* p. 14.)

The 12th section of this general law thus made applicable authorizes the directors of the company to make by-laws, but requires that the same shall be "not inconsistent with the laws of the State."

Gross' Stat. of Ill. (Ed. of 1869), p. 543.

The 21st section, among other provisions enumerating the powers of the corporation, contains the following: "To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for any passenger and his ordinary baggage shall not exceed three cents a mile, unless by special act of the legislature, and shall be subject to alteration as hereinafter provided."

Ibid, p. 544, § 21, clause 10.

The 28th section (*Ante* p. 15) requires the company to make certain annual reports to the Secretary of State, which if accurately made would furnish data from which it could be ascertained whether the profits upon the capital actually paid in exceeded fifteen per cent. per annum, so as to authorize a reduction of rates as contemplated by § 32. (*Ante* p. 16.)

Whether facts existed showing that the annual profits exceeded fifteen per cent., it is unnecessary to inquire, for the reason that under the act of April 15, 1871, before cited, the maximum rate of fare for passengers on this road was fixed at three cents per mile, the same as the maximum rate specified in § 21 of the general law of 1849; and no attempt has been made by the State to reduce the fare below that amount. Under the general law of 1849 this company was

limited to a maximum rate of three cents per mile for passengers, the same as under the law of 1871.

But it will undoubtedly be claimed by counsel for plaintiff in error that broader powers in this regard were conferred upon the company by § 6 of the special act of June 19, 1852, amending the charter of this company. (*Ante* p. 17.)

That section is as follows:

"SEC. 6. The company shall have power to make, ordain and establish all such *by-laws, rules and regulations* as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business and interest of the company; *Provided*, that the same be not repugnant to the constitution and laws of the United States or of this State, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons or property upon the same, as they shall from time to time *by their by-laws* determine, and to levy and collect the same for the use of said company. The transportation of persons and property, the width of track, and all other matters and things respecting the use of said road, shall be in conformity to such *rules and regulations* as the said board of directors shall from time to time determine."

Laws of Ill. of 1852, p. 39.

The proviso in this section, although inserted before the clause in relation to the collection of tolls, may with propriety be considered as qualifying the entire section.

United States v. *Babbitt*, 1 Black, 55.

Mayor of Cumberland v. *Magruder*, 34 Md., 381, 385.

It will be observed that the "by-laws, rules and regulations" which the company is authorized by this section to establish, are to "be not repugnant to the constitution and laws of the United States or of this State." And the

"rates of toll" thereby authorized to be established are such as the company shall from time to time, "by their by-laws," determine. This, we submit, may fairly be regarded as equivalent to a requirement that the by-laws establishing or determining the rates of toll, shall not be inconsistent with the laws of the State.

The authority to "make ordain and establish by-laws, rules and regulations" is conferred by the first clause of the section in the broadest possible language, and clearly embraces all the by-laws, rules and regulations it was intended the company should make; and the proviso immediately following that clause consequently embraces all the by-laws, rules and regulations the company was authorized to ordain or establish.

The clause of the section immediately following the proviso does not in terms purport to be, nor was it designed to be, a substantive or independent grant of power to make by-laws, but rather a grant of power to establish and collect for the use of the company such tolls as the company may have *determined by its by-laws.* #

In other words, the company were thereby authorized to embrace the subject of the tolls in the by-laws it was authorized to adopt; and these by-laws, as we have shown, must not be repugnant to the laws or constitution of the State or of the United States.

This view is confirmed by a reference to the last paragraph of the section, viz: "The transportation of persons and property, the width of track, and all other matters and things respecting the use of said road, shall be in conformity to such *rules and regulations* as the board of directors shall from time to time determine."

It would be unreasonable to hold that the "rules and

Section 5 of the agreement of the Corporators into Board of Directors Pl. Brief

regulations" referred to in this paragraph were not part and parcel of the same "rules and regulations" provided for in the first clause of the section which by its terms embraces "all such by-laws, rules and regulations as may be deemed expedient," etc.

We submit that the office of this latter provision was to require the company to operate the road and conduct its affairs, in the matters specified, in accordance with the "rules and regulations" adopted by virtue of the grant of power previously made; and that the same ought not to be construed as a new and independent grant of power to adopt such rules and regulations as the company might see fit, regardless of the fact as to whether the same were, or were not, repugnant to the laws and constitution of the State and of the United States. Unless it is held that the portions of the section relative to "by-laws, rules and regulations," which come after the proviso, are embraced within its requirement, that the same shall not be repugnant to the constitution and laws of the State, etc., the proviso becomes nugatory; for in that case all necessary by-laws, rules and regulations could be adopted by virtue of these latter provisions, and the authority conferred by the first clause of the section subject to the limitations of the proviso, would remain unexercised.

Again, § 12 of the general law under which this company was organized, requires the by-laws to be "not inconsistent with the laws of this State." There is no express provision in the amendatory act repealing this wholesome requirement, and upon familiar principles it cannot be held to be repealed by implication.

Taking all of these provisions of the statute into view, there is nothing which would warrant the inference that the

legislature intended thereby to bind the State by contract, that no future law should be passed prescribing maximum rates for the company.

2. It is not fairly to be inferred from the general language of any of these railroad charters, that the General Assembly ever intended to confer upon the corporations organized under the same, the power to charge, for the transportation of passengers or freight, extortionate rates. It cannot be justly presumed that the legislature intended to deprive itself and its successors of the power to pass all laws necessary to prevent extortion.

Such restraint upon the exercise of the proper powers of government, if imposed at all, must be by express provision. It will never be held to exist as the result of implication or presumption, from a general power to fix rates conferred upon the company. Upon authority, we submit that, this position is incontestable.

"All public grants are strictly construed. Nothing can be taken against the State by presumption or inference. The established rule of construction in such cases is, that rights, privileges and immunities not expressly granted, are reserved. There is no safety to the public interests in any other rule. And with special force does the principle upon which the rule rests apply, when the right, privilege or immunity claimed calls for any abridgment of the powers of government or any restraint upon their exercise."

The Delaware Railroad Tax, 18 Wall., 225.

In the application of this rule to the clause of a railroad charter which provided that the "company shall pay annually into the treasury of the State a tax of one-quarter of one per cent. on the capital stock thereof of $400,000, the said tax to be paid semi-annually, etc., *in each and every year hereafter*," (*Ibid*, p. 217), the court held that

inasmuch as there were no negative words used, that is to say, as it was not provided that the company should *not* be otherwise taxed, this provision would not be construed as a contract that the legislature would not subject the company to a different and more onerous mode of taxation. (*Ibid*, 226.)

So, in the case at bar, inasmuch as there is no provision fixing the maximum rates, accompanied with a declaration that the same shall not be reduced by the legislature, nor any provision declaring that no law shall be passed prescribing reasonable rates, the prohibition of the exercise of such power cannot be inferred or implied.

The principles of construction which lead to this result have been frequently declared in this court. In the case of *Charles River Bridge* v. *Warren Bridge*, 11 Pet., 546, it is said: "But we are not now left to determine, for the first time, the rules by which public grants are to be construed in this country. The subject has already been considered in this court, and the rule of construction, above stated, fully established. In the case of the *United States* v. *Arredondo*, 6 Pet., 738, the leading cases upon this subject are collected together by the learned judge who delivered the opinion of the court; and the principle recognized that *in grants by the public, nothing passes by implication.*"

* * * * * * *

"But the object and end of all government is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created. And in a country like ours, free, active and enterprising, continually advancing in numbers and wealth, new channels of communication are daily

found necessary, both for travel and trade, and are essential to the comfort, convenience and prosperity of the people. A State ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in preserving it undiminished."

* * * * * * *

"The continued existence of government would be of no great value if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform transferred to the hands of privileged corporations. The rule of construction announced by the court was not confined to the taxing power, nor is it so limited in the opinion delivered. On the contrary, it was distinctly placed on the ground that the interests of the community were concerned in preserving undiminished the power then in question; and whenever any power of the State is said to be surrendered or diminished, whether it be the taxing power or any other affecting the public interest, the same principle applies, and the rule of construction must be the same."

* * * * * * *

"While the rights of private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well being of every citizen depends on their faithful preservation."

In the case of *Ohio Life Insurance and Trust Company* v. *Debolt*, 16 How, 435, the rule for the construction of legislative grants of privileges and immunities to private corporations is stated as follows: "The rule of construction in cases of this kind has been well settled by this court. The grants of privileges and exemptions to a corporation are strictly construed against the corporation, and in favor of the public. *Nothing passes but what is granted in clear and explicit terms.* And neither the right of taxation nor any other power of sovereignty which the com-

munity have an interest in preserving undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be misunderstood. This is the rule laid down in the case of *Billings* v. *Providence Bank*, and reaffirmed in the case of the Charles River Bridge Company. Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice, and necessary for the safety and well being of every State in the Union. For it is a matter of public history which this court cannot refuse to notice, that almost every bill for the incorporation of banking companies, insurance and trust companies, railroad companies, or other corporations, is drawn originally by the parties who are interested in obtaining the charter; and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that every member can deliberately examine every provision in every bill upon which he is called on to act. On the other hand, those who accept the charter have abundant time to examine and consider its provisions before they invest their money. And if they mean to claim under it any peculiar privileges, or any exemption from the burden of taxation, it is their duty to see that the right or exemption they intend to claim is granted in clear and unambiguous language. The authority which this court is bound, under the constitution of the United States, to exercise in cases of this kind, is one of its most delicate and important duties. And if individuals choose to accept a charter in which the words used are susceptable of different meanings, *or might have been considered by the representatives of the State as words of legislation only, and subject to future revision and repeal, and not as words of*

contract, the parties who accept it have no just right to call upon this court to exercise its high power over a State upon doubtful or unambiguous words, nor upon any supposed equitable construction, or inferences made upon other provisions in the act of incorporation. If there are equitable considerations in their favor, the application should be made to the State, and not to this court. If they come here to claim an exemption from their equal share of the public burdens, or any peculiar exemption or privilege, they must show their title to it; and that title must be shown in plain and unequivocal language."

3. The power to establish tolls, etc., conferred upon this company, is subject to the implied condition that such tolls shall be *reasonable*. It is a general rule of law, that where a person has a monopoly granted to him for public purposes, he is bound to render the service or use of the thing to which his privilege is annexed, for a reasonable compensation.

1 Hargrave's Law Tracts, Part 2, Chap. 6, p. 77.

Allnut v. *Inglis*, 12 East, 530, 538.#

The Common Law imposes this restriction upon all common carriers, including railroad corporations.

Hutchinson on Carriers, § 447.

Munn v. *Illinois*, 94 U. S., 133.

It ought not to be readily presumed that any State intends to repeal this salutary rule of the common law. The principle upon which this implied limitation rests was fully and ably stated in the opinion of the Supreme Court of Illinois, delivered by Chief Justice Lawrence, in the case of *Chicago & Alton Railroad Co.* v. *The People*, 67 Ill., p. 16. It is there said:

"Conceding, for the purposes of this appeal, all that is

See 4 Coke's Inst. p. 220 and 4 Bacon's Abridgment p. 158. Cited post p. 70.

claimed by counsel for the appellant in regard to the inviolability of railroad charters, regarded in the light of contracts, we are still of opinion that the legislature has the clearest right to pass an act for the purpose of preventing an unjust discrimination in railway freights, whether as between individuals or communities, and to enforce its observance by appropriate penalties.

"The grounds of this opinion may be briefly stated, and they are as follows: A railroad company is chartered solely for the purpose of exercising the functions and performing the duties of a common carrier. The duties and liabilities of common carriers are clearly defined by the common law, and have been so defined for centuries. In all commercial countries the law upon this subject is one of the most important branches of legal science, and its leading principles were established by the courts of England at an early day. One of these principles is, that nothing excuses the carrier for the non-delivery of the goods received by him for carriage, except the act of God, or the public enemy.

"We do not find it written in the charter of railroad corporations in this State, that they shall exercise their franchises subject to this stringent liability, yet, nevertheless, the court has firmly held them to it, not permitting them to evade it even by a notice, or by any means short of a special contract with the shipper, to which his free assent must be shown to have been given.

"Another perfectly well settled rule of the common law is, that they shall not exercise unjust and injurious discrimination between individuals in their rates of toll. In the language of Chief Justice Holt, when delivering the opinion of the court of King's bench in the celebrated case of *Coggs* v. *Bernard*, decided in 1703, the common carrier exercises a public employment, and it necessarily follows that he must deal with the public fairly and without unjust discrimination. This common law duty of common carriers is not prescribed in the charters of railroad corporations, but,

like the other duty of delivering goods in safety unless prevented by the act of God or the public enemy, it attaches to them by virtue of their function as common carriers, the moment they commence the transportation of freight. In accepting their charters, which gave them an artificial existence as common carriers, they necessarily accepted them with all the duties and liabilities attached by the existing law to the function of common carrier. This proposition to our minds seems so plain as hardly to admit of more argument than an axiom in mathematics.

"While the law now imposes, and always has imposed upon individuals exercising the vocation of a common carrier, the obligation of rendering service to all persons without injustice to any, how utterly unreasonable it is to claim that a corporation is to be permitted to discriminate in its tolls, at its own discretion and without regard to justice, merely because the legislature, in the charter that created it for the purpose of exercising a like vocation, has authorized it to establish rates of toll without in terms providing that they shall be free from unjust discrimination. What was the import of that grant, made, as it was, in broad and general terms? Clearly, nothing more than that the corporation should have the same right of establishing tolls that a natural person has when acting as common carrier—a right to be exercised within the same limitations that the common law in behalf of justice and public policy, imposes upon the natural man.

"This case has been argued on both sides with commendable ability and candor, and we avail ourselves of an admission made by counsel for the company to illustrate the position we are enforcing. It is conceded by counsel, in express terms, that a natural person is not allowed to make unreasonable and excessive charges as a common carrier, and an artificial being is subject to the same restrictions. It is of course contended by counsel that the legislature has no power to determine what charges are reasonable or unreasonable, but with that branch of the

question we have in this case no concern. It is undoubtedly true, as conceded by counsel, that the artificial person has no more right than the natural person to make unreasonable and excessive charges as common carriers. And why? This restriction is not found in railway charters, as generally framed, and certainly not in the charter presented by the record, in regard to which counsel are speaking. The obvious reason is the principle we have already stated. *The rule forbidding unreasonable charges was a common law rule when these charters were granted, and the companies accepted their charters with this implied limitation upon the power granted, in general terms, to establish their rates of freight. If this implied condition against unreasonable rates of freight attached by the existing law to their charters, at the date of their acceptance, on what ground can it be held that the corresponding condition against unjust discrimination did not equally attach?* There is no ground for the distinction."

This was the view taken of the question by the Supreme Court of Illinois, in the present case.

Ruggles v. *The People*, 91 Ill., 265.

This principle has been fully recognized by the English courts, although the disposition of the cases did not require its actual decision. Thus in the case of *Crouch* v. *Northern Railway Company*, 11 Excheq., 742, where an act of parliament provided that: "As regards small packages and single articles of great weight, notwithstanding the rate of tolls prescribed by this act, the said companies may lawfully demand the tolls following, that is to say: For the carriage of small parcels, that is to say, any parcel not exceeding five hundred pounds weight, the said companies may demand *any sum which they may think fit*," it was construed as meaning any *reasonable* sum they may think fit. ALDERSON, B., says: "Moreover I do not think we should have much difficulty in construing the 14th section

of the 13 & 14 Vict., c. lxi.; it means such charges made by the company as, in the opinion of a jury, are reasonable charges. I think that the company are not at liberty to charge what they please; and that the word 'reasonable' must be considered as introduced into the section. This is merely an *obiter dictum*, and not necessary for the decision of the case; but I give it as my opinion." *Ibid*, 752.

In the subsequent case of *Piddington* v. *S. E. Railway Co.*, 94 Eng. Com. Law, p. 111, WILLIAMS, J., says:

"I am of opinion that this rule should be discharged. It is unnecessary, in the view we take of this case, to decide whether or not the opinion thrown out by Alderson, J., in *Crouch* v. *The Great Northern Railway Company*, 11 Exch., 742, that the 14th section of 13 & 14 Vict., c. lxi. (the language of which is similar to that of the 133d section of the 6 W. 4, c. lxxv.), was to be read as if the word 'reasonable' had been contained therein, is correct. I do not mean to express any dissent from that opinion; but I do not think the present case calls for any expression of opinion upon the point. I may, however, observe that it seems to me to be a strong proposition to say that the 133d section of the 6 W. 4, c. lxxv., authorizes the company to charge for small parcels, not exceeding 100 lbs. weight each, whatever sum they please." *Ibid*, p. 117.

In the same case, WILLES, J., says:

"Then are the company bound to make *reasonable* charges? That depends upon the proper construction of the 133d section of the 6 W. 4, c. lxxv. I think there is very great weight in the observation of Alderson, B., in *Crouch* v. *The Great Northern Railway Company*, 11 Exch., 742, 752; but it is not necessary for us to express any opinion upon that point." *Ibid*, p. 120.

These *dicta*, if they be such, not only rest upon a firm

foundation of reason and justice, but they were a pertinent application of common law principles, familiar to the English courts.

Thus in *Allnutt* v. *Inglis*, *supra*, Lord Ellenborough, C. J., holds upon the authority of Lord Hale, that: "There is no doubt that the general principle is favored both in law and justice, that every man may fix what price he pleases upon his own property or the use of it; but if, for a particular purpose, the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must as an equivalent perform the duty attached to it, on reasonable terms." 12 East., p. 538.

The other judges concurred in this view. Grose, J.: "And if we attend to the principle of law by which monopolies are regulated, and apply to this case what is laid down by Lord Hale upon that subject, it is impossible to say that this company do not come within that principle." *Ib.*, 541.

Le Blanc, J.: "But though this be private property, yet the principle laid down by Lord Hale attaches upon it, that where private property is affected with a public interest, it ceases to be *juris privati* only; and in case of its dedication to such a purpose as this, the owners cannot take arbitrary and excessive duties, but the duties must be reasonable. That principle was followed up in the case of *Bolt* v. *Stennett;* for there the quay being one of the public quays licensed under the statute of *Elizabeth*, it was held that the owner was bound to permit the use of the crane upon it, and could not insist either that the public should not use the crane at all, or should use it only upon his own terms, but that he was bound to permit the use of it upon reasonable terms." *Ib.*, 542.

The judgment of the court rested upon the principle thus declared.

From the authorities we have cited, it is certainly not

clear beyond reasonable question, that the language used in the railroad charters now under consideration, confers upon the corporations organized thereunder, the unqualified and uncontrollable power to fix any rate for the transportation of passengers they may think proper. And this is sufficient for our purpose. For, as we have already shown, the State cannot be divested of its power to pass laws prescribing reasonable maximum rates, unless such purpose is declared in clear and unmistakable terms.

4. If these charters are subject to the implied limitation that the rates thereby authorized to be fixed by the company must be reasonable, how, and by whom, is the reasonableness of the rates to be determined? This question is fully answered by the authorities. In *Munn* v. *Illinois*, 94 U. S., 133, this court said: "It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question. As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to

regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied. In fact, the common law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use. But a mere common law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one."

Peik v. *Chicago & N. W. Ry. Co.*, *Ib.*, 165, 178.

Winona & St. Paul R. R. v. *Blake*, *Ib.*, 180.

We submit, therefore, upon the hypothesis that it is competent for a State Legislature to make a valid contract obligatory upon itself and its successors, that no law shall be passed prescribing reasonable maximum rates for the transportation of passengers upon railroads, that it does not appear in this case that the General Assembly of Illinois has, in fact, made any such contract.

II.

The enactment of Laws to prevent Extortion by those having control of such Public Highways as Railroads, is a legitimate exercise of the Police Power of the State.

1. The following authorities, if not a definition, will show the general nature and scope of that reserved power, inherent in every State, termed the "police power:"

"The police of a State, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order, *and to prevent offenses against the State*, but also to establish, for the intercourse of citizen with citizen, those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as reasonably consistent with a like enjoyment of rights by others."

Cooley on Const. Lim., 572.

"We think it a settled principle," says Chief Justice Shaw, "growing out of the nature of well ordered society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, *nor injurious to the rights of the community*. All property in this commonwealth is held subject to those regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of government to take and appropriate property whenever

the public exigency requires it, which can only be done on condition of providing a reasonable compensation therefor. The power we allude to is rather the police power; *the power vested in the legislature by the Constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.* It is much easier to perceive and realize the existence and sources of this power than to mark the boundaries or prescribe limits to its exercise."

Commonwealth v. *Alger*, 7 Cushing, 84.

The Supreme Court of Illinois uses this language:

"The power to enact police regulations operates upon all alike. This is a fundamental principle, and lies at the foundation of society itself. It is yielded by each member, when he enters society, for the benefit of all. It is incident to, and a part of government itself, and need not be expressly reserved, when it grants rights or property to individuals or corporate bodies, as they take subservient to this right. Although individual rights may be said to be absolute, they are all subject to be controlled in their enjoyment for the general good. It is in the just exercise of this power that individuals have been required to fence their lands, or forfeit the right to recover damages for trespasses committed by stock or other persons. So of quarantine regulations to protect communities against the introduction and spread of contagious diseases; and in prohibiting the exercise of noxious and unhealthy trades and manufactures, and in requiring the fencing of saltpetre caves and growing castor beans; in prohibiting the sale of unwholesome provisions, and stock running at large affected with contagious or infectious distempers; from the sale of obscene books or prints, cards and gaming implements. The law has imposed all these and many other duties and prohibitions upon individuals for the protection of citizens, their morals

and property; and notwithstanding it may appear in some degree to abridge individuals of a portion of their rights, yet we are not aware that their constitutionality has ever been challenged. Their eminent justice and propriety has commended them to the community at large as highly proper. The exercise of the power may be referred to the maxim, '*Salus populi suprema est lex*,' 'That regard be had to the public welfare, is the highest law.'"

O. & M. R. Co. v. *McClelland*, 25 Ill., 144.

Chief Justice Redfield speaks of this power thus: "There is also the general police power of the State, by which persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State; of the perfect right in the legislature to do which no question ever was, or, upon acknowledged general principles, can be made, so far as natural persons are concerned."

Thorpe v. *R. & B. R. R. Co.*, 27 Ver., 150.

Chief Justice Taney, in the License Cases, thus defines the police powers of a State:

"But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, *or a law to punish offenses*, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion."

License Cases, 5 Howard, 583.

All the authorities agree that the power to enact laws for the punishment of offenses is embraced within the police powers of the State. Whatever difficulties have arisen in efforts to define the limits of this power, it has ever been conceded that the enactment of laws providing for the pun-

ishment of crimes and misdemeanors was an exercise of that power.

N. W. Fertilizing Co. v. *Hyde Park*, 70 Ill., 643.

2. The commission of the offense of extortion is not necessarily confined to public officers, strictly speaking. It may be committed by any person who pursues a public employment, and sustains such relations to the public that the people must, without great inconvenience, necessarily deal with him.

Thus at common law: "In the case of a miller, where the custom has ascertained the toll, if the miller takes more than the custom warrants, it is extortion; and the same if a ferryman takes more than his due by custom for the use of his ferry. And it was held that if the farmer of a market erects so many stalls as not to leave sufficient room for the market people to stand and sell their wares, so that, for want of room, they are forced to hire stalls of the farmer, the taking money for the use of the stalls in such a case is extortion."

2 Bishop's Crim. Law, (5th Ed.), § 394.

Rex v. *Burdett*, 1 Ld. Raymond, 148.

Rex v. *Roberts*, 4 Mod., 101.

1 Russell on Crimes, 143.

Railroad companies entrusted with the control and management of the public highways, which the people must of necessity use, may be guilty of extortion in a legal sense.

The individual citizen and the railroad corporation do not stand upon terms of equality in making contracts as to rates to be paid for transportation. The corporation possesses every facility for the practice of extortion. In the discussion of a question closely allied to the one now under consideration, in *Railroad Company* v. *Lockwood*, 17 Wall., 379, this court said: "The carrier and his customer do

not stand on a footing of equality. The latter is only one individual of a million. He cannot afford to higgle or stand out and seek redress in the courts. His business will not admit such a course. He prefers, rather, to accept any bill of lading, or sign any paper the carrier presents; often, indeed, without knowing what the one or the other contains. In most cases he has no alternative but to do this, or abandon his business." * * * *

"If the customer had any real freedom of choice; if he had a reasonable and practicable alternative, and if the employment of the carrier were not a public one, charging him with the duty of accommodating the public in the line of his employment; then, if the customer chose to assume the risk of negligence, it could with more reason be said to be his private affair, and no concern of the public. But the condition of things is entirely different, and especially so under the modified arrangements which the carrying trade has assumed. The business is mostly concentrated in a few powerful corporations, whose position in the body politic enables them to control it. They do, in fact, control it, and impose such conditions upon travel and transportation as they see fit, which the public is compelled to accept."

It necessarily follows that they may practice extortion. Extortion has ever been regarded as a crime punishable by law. Is it within the power of any State Legislature to make valid contracts with particular persons or corporations, exempting them from the operation of any laws which may be subsequently enacted to provide for the punishment of such a crime?

The constitution of Illinois, adopted by the people of that State in 1870, contains the following:

"The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in

the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises." Art. XI., § 15.

Was it ever within the power of any State Legislature to enter into a valid contract, obligatory upon the State and its people in their sovereign capacity, exempting a particular corporation, having the control of a public highway, from the operation of laws of the nature required by this section of the constitution?

If the State had, by a valid contract, bound itself not to exercise this power as respects a particular corporation, we do not claim that it could regain the power by an amendment to the constitution. But the question is, was it ever competent for any State Legislature to enter into a valid contract, obligatory upon the people of the State in their sovereign capacity, depriving them of the power to prohibit and punish extortion committed by such a corporation? We submit that it was not.

3. Railroads are public highways, and the sovereign power of taxation and eminent domain may be brought into exercise to aid in their construction.

R. R. Com'rs v. *P. & O. R. R. Co.*, 63 Me., 269.
West River Bridge Co. v. *Dix*, 6 How., 546.
Chicago, D. & V. R. R. Co. v. *Smith*, 62 Ill., 268.
Olcutt v. *Supervisors*, 16 Wall., 678.

In the case last cited, this Court said: "That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose, whether a State's right of eminent domain could be exercised by a private corporation created for the

purpose of constructing a railroad. Clearly it could not, unless taking land for such a purpose by such an agency is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use. Yet it is a doctrine universally accepted that a State Legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be built by a private corporation, is an act done for a public use? And the reason why the use has always been held a public one, is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals when they obtain their power to construct it from legislative grant. It would be useless to cite the numerous decisions to this effect which have been made in the State courts. We may, however, refer to two or three which exhibit fully not only the doctrine itself, but the reasons upon which it rests. Whether the use of a railroad is a public or a private one, depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the State. Though the ownership is private, the use is public. So turnpikes, bridges, ferries and canals, although made by individuals under public grants, or by companies, are regarded as *publici juris*. The right to exact tolls or charge freight is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge."

Olcutt v. *Supervisors*, 16 Wall., 694, 695.

Each railroad corporation is entrusted with a monopoly

of one or more of the public highways of the State, and possesses every facility for the practice of extortion upon the public. The power to enact laws to define and punish this offense is, we submit, embraced within any admissible definition of the police powers of the State.

4. The courts have uniformly traced to this source the power of the States to pass laws of this nature. Thus in the case of *Chosen Freeholders of Hudson Co* v. *The State*, (4 Zabriskie, 728,) the Supreme Court of New Jersey say:

"The regulation of tolls of bridges and turnpike roads, and the fares of railroads and ferries, is in no just sense a regulation of commerce, and has never been so regarded. *It is a part of that general power of police*, essential to every State, and which could not be with safety, and has not been, surrendered to the general government."

In *Munn* v. *Illinois*, 94 U. S., 125, this Court say:

"From this source [referring to the maxim *sic utere tuo ut alienum non lædas*] come the *police powers*, which, as was said by Mr. Chief Justice Taney, in the *License Cases*, 5 How., 583, 'are nothing more or less than the powers of government inherent in every sovereignty, that is to say, the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold."

So, in *Railroad Company* v. *Fuller*, 17 Wall., 560, this Court held that an act of a State legislature was a police

law, which required each railroad company at specified times, annually, to fix its rates for the transportation of passengers and freight, and to cause printed copies thereof to be kept posted at all its stations, and for a failure to fulfil these requirements, *or for charging higher rates than those posted*, imposed penalties upon the offending company. The court say: "The statute was doubtless deemed to be called for by the interests of the community to be affected by it, and it rests upon a solid foundation of reason and justice. It is not, in the sense of the constitution, in any wise a regulation of commerce. *It is a police regulation.* * * * If the requirements of the statute here in question were, as contended by the counsel for the plaintiff in error, *regulations of commerce*, the question would arise, whether, regarded in the light of the authorities referred to, and of reason and principle, they are not regulations of such a character as to be valid until superseded by the paramount action of Congress. *But as we are unanimously of the opinion that they are merely police regulations, it is unnecessary to pursue the subject.*" *Ib.*, 567, 570.

And the Supreme Court of Iowa sustained the constitutional validity of the same statute, upon the same ground, viz: that its enactment was a proper exercise of the police power of the State, and that its provisions were in the nature of police regulations.

Fuller v. *Chicago & N. W. Ry. Co.*, 31 Iowa, 188, 211.

In the case of *Illinois Central Railroad Co.* v. *The People*, 95 Ill., 313, it is held that the charter of a corporation is, beyond a doubt, a contract, by which the corporation acquires the powers and functions to transact its business in the mode prescribed, but this is, by necessary

implication, subject, the same as in case of natural persons, to the legislative power of the State to define, prohibit and punish extortion in the collection of freights.

In the case of *People ex rel.* v. *Boston & Albany Railroad Company*, 70 N. Y., 570, the Court of Appeals of that State hold that:

"Railroad corporations hold their property and exercise their functions for the public benefit, and they are therefore subject to legislative control. The legislature which has created them, may regulate the mode in which they shall transact their business, *the price which they shall charge for the transportation of freight and passengers*, the speed at which they may run their trains, and the way in which they may cross or run upon highways and turnpikes used for public travel. It may make all such regulations as are appropriate to protect the lives of persons carried upon railroads, or passing upon highways crossed by railroads. All this is within the domain of legislative power, although the power to alter and amend the charters of such corporations has not been reserved.

"This whole subject of legislative power over railroads, and even private persons holding and using their property for public purposes, has been so fully discussed recently in the Supreme Court of the United States, in the *Granger Cases* and the *Chicago Elevator Case*, as to make further discussion unnecessary here. Such legislation violates no contract, takes away no property, and interferes with no vested right." See Field on Corp. §§ 43 44.

III.

The Police or Governmental Powers of the State are inalienable, and its Legislature cannot bind itself by contract not to exercise them.

It would seem unnecessary to enter into an argument in support of this proposition. This principle has been asserted and maintained with great distinctness in the recent decisions of this Court.

1. In the opinion of this Court, in the case of *Stone* v. *Mississippi*, 101 U. S., 814, after referring to the *Dartmouth College Case*, 4 Wheaton, 518, holding that a charter to a private corporation may contain a contract which cannot be impaired by subsequent legislation, it is said:

"In this connection, however, it is to be kept in mind that it is not the *charter* which is protected, but only any *contract* the charter may contain. If there is no contract, there is nothing in the grant on which the constitution can act. Consequently the first inquiry in this class of cases always is, whether a contract has in fact been entered into, and if so, what its obligations are."

And after discussing the terms of the charter, which authorized the maintenance of a lottery for the term of twenty-five years for an express pecuniary consideration, the opinion proceeds:

"If the legislature that granted this charter had the power to bind the people of the State and all succeeding legislatures to allow the corporation to continue its corporate existence, there is no doubt about the sufficiency of the language employed to effect that object. * * * Whether the alleged contract exists, therefore, or not, depends on the authority of the legislature to bind the State, and the people of the State, in that way. All agree that the legislature cannot bargain away the police power of a State."

The Court then quote with approbation the following from *Metropolitan Board of Excise* v. *Barrie*, 34 N. Y., 657: "Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the government of the State; but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police." And further on, (p. 820) the Court lay down these general propositions, the soundness of which ought never to be questioned:

"But the power of governing is a trust committed by the people to the government, no part of which can be granted away. * * * * * *

"The contracts which the Constitution protects are those that relate to property rights, not governmental."

101 U. S., 820.

In the case of *Beer Company* v. *Massachusetts*, 97 U. S., 25, it is said:

"But there is another question in the case, which, as it seems to us, is equally decisive. The plaintiff in error was incorporated 'for the purpose of manufacturing malt liquors in all their varieties,' it is true; and the right to manufacture, undoubtedly, as the plaintiff's counsel contends, included the incidental right to dispose of the liquors manufactured. But although this right or capacity was thus granted in the most unqualified form, it cannot be construed as conferring any greater or more sacred right than any citizen had to manufacture malt liquor; nor as exempting the corporation from any control therein to which a citizen would be subject, if the interests of the community should require it. If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State. * * * Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and public morals. The legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, '*salus populi suprema lex*;' and they are to be attained and proidved for by such appropriate means as the

legislative discretion may devise. That discretion can be no more bargained away than the power itself." *Ib.*, pp. 32, 33.

In *Boyd* v. *Alabama*, 94 U. S., 645, at the conclusion of the opinion the Court say: "We are not prepared to admit that it is competent for one legislature, by any contract with an individual, to restrain the power of a subsequent legislature to legislate for the public welfare, and to that end to suppress any and all practices tending to corrupt the public morals." *Ib.*, p. 650.

In the *Delaware Railroad Tax Case*, 18 Wall., 226, while it was held on the principle of *stare decisis*, that a State might enter into a valid contract exempting property from taxation, it was assumed as settled law that a State could not make a contract whereby it surrendered its police power, or power of eminent domain. In the opinion of the Court, delivered by Field, Justice, it is said:

"If the point were not already adjudged, it would admit of grave consideration, whether the legislature of a State can surrender this power [of taxation], and make its action in this respect binding upon its successors, *any more than it can surrender its police power*, or its right of eminent domain."

We quote at length the opinion of the Supreme Court of Massachusetts, in the case of *Commonwealth* v. *Intoxicating Liquors*, 115 Mass., 153:

ELLIOTT, J.: "The claimant in this case contends that having been created a corporation for the purpose of manufacturing malt liquors under a charter which the legislature has no power to alter, modify or repeal, it has the right to sell the products of its manufacture, notwithstanding the provisions of the statute of 1869, c. 415, relating to the manufacture and sale of intoxicating liquors. We do not think this position is tenable. By its charter the claimant

is a private manufacturing corporation, with the same power as a natural person to do that which its charter authorizes; and by implication with the same power as an individual to deal with and sell its property so manufactured. But the authority of the legislature over the property or the use of the property of a corporation is not lost, because no power is reserved to repeal or amend its charter. Any laws the sovereign power may find it necessary or salutary to enact, regulating, controlling, restricting or prohibiting the sale of a particular kind of property, for the general benefit, apply as well to the property of corporations, like the claimant, as to individuals. Such laws are in the nature of police regulations, and individuals and corporations are alike subject to them. Indeed all property is held subject to such restriction, and it is immaterial that the restriction is imposed after the property is acquired or becomes valuable, or after the charter is granted, or before it became necessary in the judgment of the legislature to pass a law on the subject. Every such law limits, restrains, impairs and in some cases destroys the uses, which were previously enjoyed, of the property so made the subject of legislation, but the extent to which it may do so does not affect the validity of such laws, or their equal application to all owners of such property. They are presumed to be passed for the common good, and to be necessary for the protection of the public, and cannot be said to impair any right, or the obligation of any contract, or to do any injury in the proper and legal sense of these terms.

"The statute of 1869, c. 415, does not therefore impair the obligations of the contract contained in the charter of the claimant, so far as it relates to the sale of malt liquors, but is binding on the claimant to the same extent as upon individuals."

2. It is true, that in some of the earlier cases in the State courts, wherein the proposition was advanced that the police power of the State could not be granted away by

contract, the subject was approached with much hesitation, and apparent timidity.

The fact that the final determination of the question, as to whether particular laws impaired the obligation of contracts, devolved upon this Court, no doubt had its influence in causing the State courts to proceed with great caution in the enunciation of this principle. So we find, occasionally, that the earlier declarations of the law upon this subject are hedged about with qualifications, in some respects utterly incompatible with the principle that the police power of the government cannot be granted away by contract. We find these qualifications summed up in a single paragraph in Cooley's Constitutional Limitations, p. 577:

"The limit to the exercise of the police powers in these cases must be this: the regulations must have reference to the comfort, safety, or welfare of society; *they must not be in conflict with any of the provisions of the charter;* and they must not, under pretence of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise."

In reference to the statement that the police regulations "must not be in conflict with any of the provisions of the charter," we submit that it is not the law, as settled by this Court. If the police regulations "must not be in conflict with any of the provisions of the charter," in any instance, what becomes of the doctrine that the power of the State to enact police regulations or laws, cannot be granted away or restrained by contract? Suppose the charter happens to contain something which in fact is in conflict with a police regulation subsequently enacted, which must give way, this clause of the charter, or the police regulation?

In *Stone* v. *Mississippi*, *supra*, there was a clear and unquestionable conflict between the provisions of the charter, which professed to give the right to maintain the lottery for a term of years, and the police regulation or law subsequently enacted, which forbade it. This Court gave effect to the police regulation, and held that it did not impair any valid contract contained in the charter, for the reason that "the power of governing is a trust committed by the people to the government, *no part of which can be parted with by contract.*"

In cases of this character, the only debatable question which can properly arise is whether the subsequent enactment of a law which comes in conflict with the provisions of the charter, is in reality an exercise of the police powers of the State. If this point is ruled in the affirmative, the law, although subsequently enacted, must prevail over the rovisions of the charter, because there can be no valid contract restraining the State from the exercise of this power. At the time of the preparation of Judge Cooley's work upon Constitutional Limitations, from which we have made the above extract, the principles involved had not been directly passed upon in this Court. The cases of *Beer Company* v. *Massachusetts*, and *Stone* v. *Mississsppi*, *supra*, as well as *The Delaware Railroad Tax*, and *Boyd* v. *Alabama*, have been subsequently decided. If that learned jurist was writing upon this subject to-day, he would not be compelled merely to say: "It has also been *intimated* in a very able opinion, that the police power of the State could not be alienated, even by express grant. * * * "It would *seem*, therefore, to be the prevailing opinion, and based upon sound reason, that the State could not barter away, or in any manner abridge or weaken any of those essential powers which are inherent

in all governments, and the existence of which in full vigor is important to the well-being of organized society."

Cooley's Const. Lim., pp. 282–3.

That which at the time this author wrote had been *intimated* to be the law, and upon such authorities as then existed *seemed* to be the prevailing opinion, based upon sound reason, has since been authoritatively declared to be the law by the highest court competent to speak upon the question. As a principle of constitutional law, it is now settled that a State Legislature cannot bind the State by contract not to exercise its police powers. It necessarily follows that such power may be exercised, even though it renders nugatory express provisions of prior acts of incorporation which come in conflict with the subsequently enacted police regulations.

3. The phrase, police powers of the State, as all the authorities agree, is but a mere conventional name for the powers of government inherent in every sovereignty, and includes the power of the State to pass all necessary laws for the government of men and things within its jurisdiction.

License Cases, 5 How., 589.

Munn v. *Illinois*, 94 U. S., 125.

If this power of government rightfully extends to any class of property, it must extend to that which the State, in the exercise of its sovereignty, has authorized to be taken for public use. While the ownership of such property may be vested in a private corporation, its use must ever remain public.

Olcott v. *Supervisors*, 16 Wall., *supra.*

If, as this Court holds, "the power of governing is a trust committed by the people to the government, no part of which can be taken away," can a State Legislature, in

the same act by which it authorizes property to be taken for public use as a highway, enter into a valid contract abdicating its power and absolving itself and its successors from the duty, to pass all necessary laws to protect the public from extortion and oppression in the use of such highway? Upon both reason and authority, the answer to this question must be in the negative.

The case of *Dartmouth College* v. *Woodward*, 4 Wheat., 518, which is so frequently cited in support of the doctrine that charter contracts cannot be impaired by subsequent legislation, is, in fact, an authority against any such application of the principle there announced, as is here contended for by the counsel for the plaintiff in error.

Referring to, and quoting from, that case, this Court has recently said: "In *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat., 518, it was argued that the contract clause of the constitution, if given the effect contended for in respect to corporate franchises, 'would be an unprofitable and vexatious interference with the internal concerns of a State, would unnecessarily and unwisely embarrass its legislation, and render immutable those civil institutions which are established for the purpose of internal government, and which, to subserve those purposes, ought to vary with varying circumstances;' but Mr. Chief Justice Marshall, when he announced the opinion of the court, was careful to say, 'that the framers of the Constitution did not intend to restrain States in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed.' The present case, we think, comes within this limitation."

Stone v. *Mississippi*, 101 U. S., pp. 819, 820.

We submit that the present case falls equally within

the same limitation. The power which it is here claimed the State has bound itself by contract not to exercise, is the power to pass such laws as may be deemed necessary for the government and control of property taken under the sovereign authority of the State for public use. As was said by this Court in *Olcott* v. *Supervisors*, *supra*, "No matter who is the agent, *the function performed is that of the State.*"

The reasoning in the Dartmouth College case clearly excludes the idea that a State Legislature may enter into an obligatory contract that no law shall be passed for the government of property, taken under the sovereign authority of the State, for public use.

In the opinion of Chief Justice Marshall (4 Wheat., p. 634), the following question is propounded:

"Are the trustees and professors public officers, invested with any portion of political power, partaking in any degree in the administration of civil government, and performing duties which flow from sovereign authority?"

In that case this question, in all its branches, could properly be answered in the negative.

It is otherwise here. The railroad corporation exercised the "sovereign authority" of the State to procure its right of way, professedly for public use, and to that end was invested with a "portion of political power"—indeed, one of the highest sovereign powers—and was an agency used "in the administration of civil government," viz., the construction of a public highway. Unlike the college, the railroad corporation exercised powers which could only be derived from the State in its sovereign capacity; in fact, it exercised a part of the sovereign power of the State, and "the function performed is that of the State." It may be

conceded that a railroad company may not be, strictly speaking, a public corporation, nor its officers public officers.

Nevertheless, this railroad corporation was constituted a common carrier, and as such common carrier pursues a public employment, "and exercises a sort of public office, and has public duties to perform."

Coggs v. *Bernard*, 2 Lord Raymond, 909.
New Jersey Nav. Co. v. *Merchants' Bank*, 6 How., 382.
Sanford v. *Railroad Co.*, 24 Pa. St., 381.
Munn v. *Illinois*, 94 U. S., 130.
C. & N. W. Ry. Co. v. *The People*, 56 Ill., 377.

If this is true of an ordinary common carrier upon whom no special privilege has been conferred, for stronger reasons is it true of a railroad corporation, called into existence to exercise the vocation of a common carrier, and to that end authorized to make use of the sovereign power of the State to condemn the right of way, and thus establish the public highway upon which it may ply that vocation.

4. There is certainly no less necessity that corporations, in the exercise of their vast powers, and possessing the insidious influence which necessarily springs from great aggregations of capital, should be held subject to the restraints of governmental authority, than exists in the case of natural persons. Through the agency of these corporations a very few men may, and in fact do, control and rule with imperial sway all the principal lines of railway in the country, the use of which has become an indispensable necessity to the public in the transportation of passengers and freight. The power thus wielded is almost incalculable. If the managers of these railroads are above legislative control, they have become the masters of the people.

It is, we submit, of the utmost importance that all the rightful powers of government to correct abuses by those to whom the management of these corporations is entrusted, should remain unimpaired, and be maintained in their full vigor. If there is any subject in respect to which all attempts to sell, barter away, or in any wise impose restraints upon the exercise of governmental power, should be held futile and inoperative, it is this.

Corporations exercising the powers of common carriers should be held as strictly amenable to the law as natural persons performing the same functions. The authority conferred upon them by their charters to exercise certain callings, and carry on certain branches of business, should not be construed as giving a more unlimited or uncontrollable power in the premises than is possessed by a citizen or partnership firm having the right to exercise the same calling or carry on the same business.

Commonwealth v. *Intoxicating Liquors*, 115 Mass., 153.
Beer Company v. *Massachusetts*, 97 U. S., 25.
Bank of Republic v. *County of Hamilton*, 21 Ill., 53, 59.
C. & S. R. R. Co. v. *The People*, 67 Ill., 11, 18.
N. W. Fertilizing Co. v. *Hyde Park*, 70 Ill., 634, 643.

And since a natural person exercising the vocation of a common carrier is subject to legislative control in respect to his rates of charges, a corporation having authority to exercise the same vocation must be equally subject to the same law.

The idea that the managers of railroad corporations are vested with irresponsible and uncontrollable power in respect to matters of such great public concern, must impress every just mind as dangerous in the extreme.

It is unreasonable to assume that the people of any

State ever intended to confer upon its legislature, power to invest a corporate organization, created to carry on business in their midst, with capacity so exalted that it should be superior to the citizen and above the restraints of law.

The property rights of such an organization may be equal to those of the citizen, but they cannot be greater. The contract rights of such an organization may be equal to those of the citizen, but they cannot be greater. All the rights which either possesses, must ever be held equally subject to the proper exercise of governmental authority.

Neither can be absolved therefrom by contract, because the powers of government cannot be granted away by contract.

If the State has power to govern anything within its jurisdiction, such power must extend to artificial creations or corporate bodies, spoken into existence by its authority. The right of the creator to govern the thing created cannot well be denied.

5. Neither the State nor the National Constitution should be so construed or administered as to work the destruction of the very governments they were ordained to establish and make perpetual. Under our present Constitution, the existence of the State governments with all their proper powers unimpaired, is essential to the continued existence of the National government. The State governments not only form the basis, but constitute an essential part of the frame work of the National government. Strike down the States and there can be no United States.

It cannot be, therefore, that when the framers of the Constitution of the United States inserted therein the provision that "No State shall * * pass any * * law impairing the obligation of contracts," it was designed or

anticipated that the same would be perverted into an authority to State Legislatures to sell, or bind themselves by contract not to exercise their legislative or other proper powers of government. The competency of State Legislatures to make particular contracts is wholly unaffected by this provision.

If the undertaking, or enactment by a State Legislature, claimed to be a contract, never in fact constituted a valid contract, perpetually obligatory upon the State, by reason of want of power to make such a contract, then the same can receive no support or protection from this clause of the Federal Constitution.

And inasmuch as the State Legislature has no power to enter into a contract binding the State not to exercise its powers of government, no undertaking of this character can properly receive any support or protection from this provision of the Constitution.

We have elsewhere shown, upon the authority of this Court, that the enactment of laws to prevent extortion and prescribing maximum rates for the transportation of passengers and freight upon railroads, is a proper exercise of legislative power. In other words it is one of the powers of government inhering in each of the States. This being so, the enactment of such laws cannot impair the obligation of any contract, because no valid contract could ever have been made depriving the State of power to enact such laws.

There is an obvious distinction between a law and a contract. Laws are enacted by, or in virtue of sovereign authority. Contracts may be entered into by competent parties, not possessing any such authority.

Laws may be amended or repealed by laws subsequently

enacted. Contracts cannot be impaired or amended by laws subsequently enacted.

A State possesses the capacities of a sovereign, and also the subordinate powers of a mere corporation. By virtue of the former it enacts laws. Through an exercise of the latter it makes contracts.

It is unreasonable to hold that a State Legislature, by an exercise of its subordinate power to make contracts in behalf of the State, can divest the State of its sovereign power to enact laws.

In such case, as well as in the case of a natural person, there are certain well understood limitations upon the power to make valid contracts.

A natural person, possessing all the powers of a citizen, cannot by contract confer upon another the right to deprive him of life or limb, or the right to do any act which would unnecessarily endanger either.

Upon the same principle, and for stronger reasons, a State Legislature cannot, by virtue of its authority to represent the State in making contracts in its behalf, enter into a valid contract whereby it would divest the State of its inherent sovereign power to enact laws for the government of those within its jurisdiction. The incidental and subordinate power to make contracts, cannot absorb the principal and sovereign authority to enact laws. The less cannot include the greater.

The General Assembly of Illinois had authority to exercise, but not sell, the legislative powers conferred upon it. Each successive General Assembly convenes with as full a measure of legislative power as its predecessors. To hold that legislative power may be the subject of barter and sale by the representatives of the people, would be de-

structive of government. It would ultimately force upon the people the necessity of revolution to regain such power.

Since the foregoing was in type we have been furnished with the printed argument of one of the counsel for plaintiff in error, in which frequent reference is made to the expressions contained in the opinions of this Court in the Railroad Rate cases reported in 94 U. S., pp. 155–182, to the effect that railroad corporations are subject to legislative control in respect to their rates of charge "unless protected by their charters," etc.

Great reliance seems to be placed upon those expressions as authority in support of the contention of counsel that it was competent for the State Legislature to confer upon the corporation *by contract* the absolute and uncontrollable right to charge such rates as it sees fit, whether reasonable or extortionate.

As we read the opinions, the Court in fact decided no such question. The most that can be fairly claimed is, the question was left undecided. This is apparent from what is said in *C. B. & Q. R. R. Co.* v. *Iowa*, 94 U. S., at page 161:

"This company, in the transactions of its business, has the same rights, and is subject to the same control, as private individuals under the same circumstances. It must carry when called upon to do so, and can charge only a reasonable sum for the carriage. * In the absence of any legislative regulation upon the subject, the courts must decide for it, as they do for private persons, when controversies arise, what is reasonable. But when the legislature steps in and prescribes a maximum of charge, it operates upon this corporation the same as it does upon individuals engaged in a similar business. It was within

the power of the company to call upon the legislature to fix permanently this limit, and make it a part of the charter; and, if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done, the charter *might* have presented a contract against future legislative interference."

In the present case there was no legislation fixing the maximum rate except the general law of 1849, before cited, nor any undertaking on the part of the State that it would not pass laws prescribing maximum rates. The case suggested by the Court, therefore, does not arise upon this record.

Assuming that the clauses of these charters in respect to rates will bear the construction for which the counsel for the railroad corporation contend, viz: that the corporation shall have the absolute and uncontrollable authority to fix its own rates, whether reasonable or extortionate, the question remains whether such a provision possesses the qualities, and is entitled to protection as an obligatory contract.

Under our polity and system of government all grants of corporate franchises are made by the legislative department of the government under the form of legislative enactments. Such acts of incorporation not unfrequently contain provisions which in their essence and nature are mere *laws* and not *contracts.*

To mark and emphasize this fact, as well as distinction, in *Stone* v. *Mississippi*, *supra*, this Court found it necessary to say: "In this connection, however, it is to be kept in mind that it is not the charter which is protected, but only any contract the charter may contain. If there is no contract, there is nothing in the grant on which the Constitution can act. Consequently the first inquiry in this class of cases always is, whether a contract has in fact been entered into, and if so, what its obligations are."

It is not true, therefore, that every provision contained in an act of a legislative body to incorporate a railroad company is invested with the force and efficacy of an obligatory contract, and thus brought within the protection of the Federal Constitution.

Such charters or acts of incorporation may, and often do, contain provisions which only have force and effect as mere laws, and are therefore subject to amendment or repeal.

The practice has been quite common to refer, without accurate discrimination, to every charter or act of incorporation as a *contract*. This language may have been strictly proper when applied to charters creating corporations granted by the British Crown. The King, acting alone and without the concurrence of parliament, possessed no legislative authority. Charters granted by him conferring corporate franchises were valid so far, and so far only, as they constituted contracts. If they contained provisions not properly the subject of contracts, or not within the scope of authority to make contracts, such provisions were void and conferred no rights. Thus while the King had power to grant the franchise to maintain a fair or public market, and to authorize the collection of tolls, yet the tolls so authorized must be reasonable and not excessive, otherwise the grant as to tolls would be void. Lord Coke states the law thus:

"Every one that hath a faire or market, ought to have it by graunt or prescription; if the King graunt to a man a faire or market, and graunt no toll, the patentee shall have no toll, for toll being a matter of private for the benefit of the lord is not incident to a faire or market so graunted without a speciall graunt, as it was adjudged in the case of

Northampton; for such a faire or market is accounted a free faire or market, and there it was also resolved, that after such a graunt made the King cannot graunt a toll to such a free faire or market without *quid pro quo*, some proportionable benefit to the subject. Lastly, it was there resolved that if the toll graunted with the faire or market bee outragious or unreasonable, the graunt of the toll is void, and that the same is a free market or faire."

Coke's Institutes, Part 2, Vol. 4, p. 220.

Tolls which "bee outragious or unreasonable" are thus defined by the same authority: "*Outragious.*] That is either where a reasonable toll is due, and excessive toll is taken, or where no toll at all is due, and yet toll is unjustly usurped, for it is an outrage to doe such a common injury and wrong."

Ibid, p. 219.

"Also, if the King at the time he grants a fair or market, grants a toll, and the same is outrageous and excessive, the grant of the toll is void, and the same becomes a free fair or market."

4 Bacon's Abridgment, p. 158.

"The King cannot appoint a burthensome toll." If the toll specified in the grant or charter is excessive, the grant is void.

Heddy v. *Welhouse*, Cro. Eliz., 558.

Wright v. *Bruister*, 24 E. C. L., 60.

The same principle is recognized and enforced in Lord Hale's Treatise *De Portibus Maris*, as to tolls or duties charged for the use of public wharves, etc., quoted in *Munn* v. *Illinois*, 94 U. S., 127, where it is said: "In that case there cannot be taken arbitrary and excessive

duties for cranage, wharfage, pesage, &c.; neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, *though settled by the King's license or charter.*"

We find thus firmly fixed in the Common Law a reasonable and just limit to the power by charter contract to confer the right to collect tolls from the public. The limit is that the tolls granted by contract must be *reasonable.* An attempt thus to grant the right to collect excessive tolls is simply void.

The sturdy English judges and sages of the common law set up this barrier in behalf of common right, and to protect the people from the greed of monopolists. It was a part of the common law at the time of the adoption of our Constitution, as firmly established as the principles of Magna Charta itself, that an attempt to grant by charter the right to collect excessive tolls was not a contract, but void, and conferred no rights whatever. Is it reasonable to hold that the framers of our Constitution intended to throw the shield of its protection over such pretended contracts, thus condemned as absolutely void?

While it is true that a State Legislature has power to legislate as well as make contracts in the passage of an act providing for the incorporation of a railroad company, yet its power to make valid contracts in respect to the imposition of tolls is no greater than that possessed by the British Crown.

A limit to the power to make contracts of this nature must exist somewhere. We find an ancient land-mark indicating a reasonable and just limit to this power deeply implanted and firmly set in the Common Law, viz: that

the right to collect excessive tolls cannot be conferred by contract. The legislation in question, therefore, cannot be held to impair the obligation of any contract.

JAMES K. EDSALL,
JOHN B. HAWLEY,
Counsel for Defendant in Error.